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THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS SUPERIOR COURT

NORTHERN DISTRICT

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JULIEN LONGDEN and SHEILA LONGDEN *

v. * 00-C-442

PHILIP MORRIS, INC., R.J. REYNOLDS TOBACCO*
COMPANY, BROWN & WILLIAMSON TOBACCO *
CORPORATION, LORILLARD TOBACCO COMPANY, *
INC., LIGGETT GROUP, INC., THE AMERICAN *
TOBACCO COMPANY, TBI CORPORATION, INC., *
MANCHESTER WHOLESALE DISTRIBUTORS, and *
NEW HAMPSHIRE TOBACCO CORPORATION *

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VOLUME I

DEPOSITION OF ANDREW EDWIN SMITH, PH.D.

(MORNING SESSION.)

Deposition taken at the law offices of Douglas, Monzione, Leonard & Garvey, PC, 6 Loudon Road, Concord, New Hampshire, on Tuesday, October 8, 2002, commencing at 9:10 a.m.

Court Reporter: Jennifer A. Vaillancourt, CSR

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I N D E X

WITNESS: Andrew E. Smith, Ph.D.


EXAMINATION: Page

By Mr. Griffin 6


EXHIBITS FOR IDENTIFICATION: (*Marked in Volume II)


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(The original of Exhibits 1 through 5 were retained by the reporter and sent to Attorney Douglas; the original of Exhibit 6 was retained by Attorney Murray.)

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APPEARANCES:

| | |
|---|---|
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| For the Defendant Philip Morris: | GETMAN, STACEY, TAMPOSI, SCHULTHESS & STEERE, PA<br>By: Laurence Getman, Esq.<br>163 South River Road<br>Bedford, NH 03110<br>(Not present.) |
| | -and- |
| | GOODWIN, PROCTER, LLP<br>BY: Thomas J. Griffin, Jr., Esq.<br>-and-<br>Michael K. Murray, Esq.<br>Exchange Place<br>Boston, MA 02109 |
| For the Defendant Liggett Group: | MCNEIL, TAYLOR & GALLO, PA<br>By: Robert Gallo, Esq.<br>180 Locust Street, P.O. Box 815<br>Dover, NH 03821-0815<br>(Not present.) |
| For the Defendant TBI, Manchester Wholesale, New Hampshire Tobacco: | NELSON, KINDER, MOSSEAU & SATURLEY, PC<br>By: Mark D. Attorri, Esq.<br>99 Middle Street<br>Manchester, NH 03101 |

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STIPULATIONS

It is agreed that the deposition shall be taken in the first instance in stenotype and when transcribed may be used for all purposes for which depositions are competent under New Hampshire practice.

Notice, filing, caption and all other formalities are waived. All objections except as to form are reserved and may be taken in court at time of trial.

It is further agreed that if the deposition is not signed within thirty (30) days after submission to counsel, the signature of the deponent is waived.

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(Smith Exhibits 1-A, 1-B, 2, and 3 were marked for identification.)

ANDREW EDWIN SMITH, PH.D.,
having been duly sworn by the reporter, was deposed and testified as follows:

EXAMINATION

BY MR. GRIFFIN:

Q. We've already met, but let me ask you, just so we're clear on the record, can I have your name and address?

A. Andrew Edwin Smith, [DELETED].

Q. Okay. And I understand that you hold a Ph.D.; is that correct?

A. Yes.

Q. How would you like me to address you? As doctor, professor, or Mr.?

A. Andy.

Q. Okay. Well, --

A. The university is a more colloquial place these days.

Q. All right. Well, I won't call you Smitty, if you wont call me Griff; how's that?

A. That's fair enough.

Q. But I'll probably wander in between professor and doctor. We'll leave it that way.

A. That's fine.

Q. As you know, my name is Tom Griffin, counsel for Philip Morris, and I'll be asking you questions here today.

Let me ask first of all, have you ever been deposed in a civil proceeding before?

A. No.

Q. So you have not gone through this before?

A. No.

Q. Let me just spend a moment talking about some of the basic ground rules that will help us get through this a bit more efficiently.

As you can tell, we have a stenographer who is basically taking down everything that's said, unless we agree to go off the record.

And basically what this exercise is, is myself, and perhaps others, asking you questions, and you answering those questions. And every question that's asked, and every answer you give, will be recorded by the stenographer.

It sounds simple, and, in a sense, it is, but one of the things you have to watch out for is that we don't talk over each other. Let me finish the question, and I'll make sure I try to be patient and let you finish your answer. That allows her to pick up everything you say, and it gives your attorney time to

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react to my questions if an objection needs to be interposed or we need to have a discussion. We can do it without having half sentences on the record.

Basically, I'll be asking you questions about your background, your involvement in this matter, the opinions that you're expected to testify to at trial. And that's what this exercise is about.

If at any time I ask you a question and you don't understand it, tell me that, and I'll do my best to rephrase it or articulate a different version of the question. Because I'm going to assume if you answered a question you've understood it. And we're all going to rely on your answers. And we want to minimize any changes or correction in testimony that we can.

We'll take a break probably every hour or so, depending upon what our needs are and, of course, what the stenographer's needs are. And if you feel you want

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to take a break, just let me know, and we'll take five or ten minutes.

My expectation is we'll go into the afternoon on this, so we'll probably take a lunch break along the way, and we'll talk about that later this morning.

Any questions about the proceedings?

A. Nope.

Q. Okay. The deposition -- You've been sworn. -- is every bit as solemn as giving sworn testimony in court before a judge and a jury. And you understand that to be the case?

A. Um-hum.

Yes.

Q. That's the other thing.

A. Yes.

Q. You have to verbalize your answers.

A. I remember my training from focus groups. Speak clearly.

Q. All right. Okay. Have you ever testified at trial as an expert in a civil litigation matter?

A. No.

Q. Okay. Have you ever testified at trial as a litigant on behalf of a party to a lawsuit?

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A. No.

Let me take that back.

The University's -- the University of New Hampshire was sued in a -- What's it called? What's the lowest level of court? -- small claims court case because one of our surveys, we called somebody who claimed that we were blocking caller ID information. Which is apparently against one of the New Hampshire statutes. He sued the president of the university.

And I was at that case to assure the judge that, no, we weren't doing any of those sorts of things. And the court ruled in our favor on that. So it was a small claims piece.

But, yes, I did testify in that.

Q. Okay. We have premarked three, actually four, exhibits, Nos. 1-A, 1-B, 2, and 3, to your deposition. There will be others to come, depending upon where the testimony leads us.

A. Um-hum.

Q. But what I've done is marked as Exhibit 1-A the version of the curriculum vitae for yourself which

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I had had prior to the deposition.
You produced an updated version of your CV,

which we've marked as 1-B, and at some point you can walk me through where the differences in the updates are.

I have also premarked, with Mr. Douglas's agreement, as Exhibit 2 the excerpt from the plaintiff's disclosures of expert -- expected expert testimony in the Longden case. Those pages, specifically Pages 18, 19, and 20, which relate to the disclosure for yourself which were provided to us on or about August 1 of this year. And I'll be asking you some questions about that.

And also premarked as Exhibit 3 to your deposition is a memo from you to Mr. Douglas dated October 3, 2002, which lists specific polls you expect to be discussing in your testimony.

Again, there may be others that we'll mark later, but I think we'll probably start with these and concentrate on these for a bit. And I'll provide you with copies of the exhibits when questions about them come up.

A. Um-hum.

Q. I note a lot of your background, at least in undergraduate through getting your Ph.D., is in

Cincinnati. Did you grow up in the Midwest?

A. I was born outside of Cleveland, Ohio, town called Madison.

And I went to college at the University of Cincinnati.

After I graduated with my BA, I was accepted there to the masters program. I got a masters degree in 1987.

Worked for a few years, and then went back for my Ph.D.

Q. Okay. And you went to grammar school and high school in Ohio?

A. Madison, Ohio.

Q. Okay. Your undergraduate degree was from the University of Cincinnati in foreign affairs; is that correct?

A. Foreign affairs. That's part of the political science department.

Q. And, as you mentioned, you then went on, again at the University of Cincinnati, and got a masters degree in political science in 1987?

A. Um-hum.

(Interruption by the reporter.)

A. Yes.

Q. BY MR. GRIFFIN: Okay. I'll try to watch for that myself.

A. Thanks.

Q. Basically from your graduation from the University of Cincinnati in June of 1983 up until the time you got your masters at the University Cincinnati in 1987, --

A. Um-hum.

Q. -- did you work at all?

A. Yes.

Q. Where did you work?

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A. I worked at Good Samaritan Hospital in Cincinnati.
Q. In what capacity?
A. I worked in the laboratory as a -- What's the title? -- lab tech. Central receiving tech. is what it was. Good college job.
Q. Okay. And while you were working at the Good Samaritan Hospital you were taking courses --
A. Yes.
Q. -- in furtherance of your masters degree?
A. Yes.

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I also worked at the university in the capacity as a graduate student.
And a -- my first year in graduate school I worked for a Professor Han Kyo Kim.
(Interruption by the reporter.)
Q. BY MR. GRIFFIN: Spell that.
MR. DOUGLAS: That got her.
A. H-a-n K-y-o Kim, K-i-m.
And I worked helping him edit a journal on East Asian affairs. I couldn't even tell you the exact name of the journal. But I could go back and find that.
My second two years of graduate school I worked as a -- the political science department's representative to the Institute for Policy Research Behavioral Sciences Laboratory.
And the way this worked, all of the -- the social science departments, and nursing, college of education departments, sent graduate schools to this institute.
And your first year there, you essentially got intensive training on how to run the computers. Because back in these days you had main frame computers

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to do all your analysis. So how to work computers, how to do data analysis, how to do practical research design.
And then the same year of your two-year stint you worked as a consultant for graduate students from your department as well as faculty -- a consultant for faculty members in your department who were doing research.
I also worked for graduate students in other departments as well kind of as a -- on an as-needed basis, who was available.
Q. You were then a graduate student yourself?
A. Yes, I was a graduate student.
Q. Were you working then for more senior, more advanced graduate students than yourself in connection with the work you were doing at the institute?
A. There were more senior graduate students that were there more as assistants to us or somebody that we could ask for information or some expertise if we had questions, but I worked directly for a guy named Roger Stuebing, S-t-u-e-b-i-n-g.
And Roger was in charge of all of the consultants at the behavioral sciences laboratory. And

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he was on staff there. He was not a graduate student. And he was a expert in research design and statistics. Certain methodology.

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In fact, now the behavioral sciences laboratory is named after him, because he was such an influential person at the university.

Q. Was he a professor at the university?

A. No, he was not.

Q. When you say he was on staff, what do you mean?

A. He was on staff of the Institute for Policy Research as -- I think his title was a senior research associate, but I'm not positive on his exact title. But he was not a professor. He did not have a Ph.D.

Q. During this time you worked with Mr. Stuebing at the behavioral sciences laboratory, was that your first exposure to behavioral sciences and public opinion polls that turned into your career path?

A. Not really. My first exposure -- first exposure would have been with my father, who was a government teacher. Going back to high school. I was exposed to politics. He taught government, economics, history. You know, he was a baseball coach, so he

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taught all the social sciences. And I was exposed to all of those at an early age.

My mother was a school teacher as well. So there was always magazines and journals in the household about various aspects of social sciences.

My undergraduate work in the department of political science and foreign affairs, we had considerable classes in research design, methodology, statistics. Those sorts of things. So even in an undergraduate capacity we did that sort of research. And we did research projects in our undergraduate classes. So --

Q. In the area of polling and public opinion surveying?

A. Secondary analysis of polling. Mainly -- polling is kind of an expensive proposition. And it's difficult for students to do it, given the time and how much effort it takes.

So we typically did -- we used surveys like the General Social Survey or the American National Election Survey, which were standard -- they're surveys that come about every two years.

The General Social Survey was conducted at

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the National Opinion Research Center at the University of Chicago, and the General Social Survey was at the Institute for Social Research, University of Michigan. (Sic)

They're kind of the two major ongoing research projects -- survey research projects in political science, for the American National Election Survey and the General Social Survey, in the area of sociology. So they're used a lot in colleges, both by faculty members as well as by students for training.

Q. Okay. You mentioned you had done some work for Professor Kim. I think it was in East Asian affairs. Did that involve any teaching?

A. No.

Q. What particular kind of work did you do for Professor Kim?

A. Reading submitted articles. Proofing them. Getting them ready for publication in the journal.

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Believe it or not, recommending if some of them should be published or not.

I didn't consider myself an expert in East Asian Affairs, but I was kind of used as a sounding board, as somebody who if you got it, does this article

make sense, do you think it's an important article. I think they used me as a perspective of a graduate student assigned to read this journal. So I did that.

And did a lot of just the basic housekeeping that's involved in putting out a journal. Sending letters back and forth to contributors. Making copies of things and sending them back and forth.

The other thing that I did, was I helped Professor Kim organize a conference on -- the exact topic -- some Japanese affairs.

And the one thing I remember about it vividly was two of the speakers were discussing the importance of jazz in pre-war Japan. So I helped them putting the logistics of that together. Getting the hotel and the conference rooms and the restaurant reservations and making sure people got in.

It was mainly logistical support for Professor Kim and his role as editor.

Q. And what typically did you do for Mr. Stuebing in connection with your work at the behavioral sciences lab?

A. Some of the specific things --

The first year we were there, we learned it

was a very intensive training year where we had two or three seminars per week. There were like a cohort of eight to ten graduate students from the different departments, economics, sociology, psychology, two from education, I think one from the college of nursing, one from the business college, one or two others, but eight to ten students, and we concentrated our training in three major areas.

The first area was how to operate the main -- the computers at the university. Again, they were main frame computers, so you had to learn what are called job control language, or JCL, so you can make the computer do what you wanted it to do. Do it just on a basic level.

And very important with that was how to handle beta sets and data tapes and punch cards and just all the logistics of getting information into and out of a computer system.

And the second area was learning the three major statistical software packages that were used at that time.

The first one, and the one I continue to use fairly regularly, is called SPSS, which stands for the

Statistical Packet for the Social Sciences. It's now -- I think it still exists in a main-frame version, but I think pretty much it's all PC based now.

The second one is called Statistical Analysis Systems, or SAS, S-A-S. And it's a similar one that's used -- mainly more business -- businesses, but it's -- people will argue as to which one is better.

And the third one was called OSIRIS, O-S-I-R-I-S, which was developed at the University of

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Michigan in an analysis of their survey data, the American National Election Survey. It's not used very much anymore.

And, actually, there was a fourth one called Biomed, or BMDT, as the abbreviation.

Q. The abbreviation one more time?

A. BMDT.

It's been a long time since I've even thought about these things.

It was a statistical package that had some particular uses that was used mainly by researchers in medicine. And I know a bit about it -- I knew a bit about how to use it, but I was mainly focussed on using SPSS, SAS, and OSIRIS.

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So we learned how to use those software packages and how to import data into the package, how to do data manipulations, and recode, and creating new variables. All that sort of stuff. How to do data statistical analyses on it. So that was an intensive process.

Typically, -- I taught courses in that my subsequent years, in SPSS. Typically that would be a one-quarter-long course meeting twice a week -- once a week three hours a day. But in that course you barely covered the minimal basics of it in a ten-week course. So we got fairly intensive training in that. At the end of the year, we were knowledgeable in that. So that took a lot of time.

The third area, the major area, of work that we did was in learning statistics and research design.

We had all taken statistics classes or we were taking statistics classes. It was quite a difference between sitting in a class and getting lectures and doing your assignments in the back of the book and then being in a real-world application where people have data sets that may be of excellent or not-so-good quality. They may have research questions

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that aren't easily answered by the data. So you have to be able to ask people what it is that they're trying to get, what are their -- help them formulate their research hypotheses, look at the data, see what variables are in their data sets that allow you to answer their research hypotheses, determine what are the appropriate statistical techniques to use, run the statistical analyses and help them interpret the statistical analyses.

So what we -- what we did in that first year was spent considerable time on some of the simple statistical techniques, frequency counts, crosstabulations, analysis of variance, multiple analysis of variance.

Then we spent a lot of time in regression. Regression techniques are -- so many different minor variations in things involved with regressions that we went through a book, I remember, by Cohen and Cohen about that thing, just on regression model.

Also, we did -- learned how to do discriminant analyses, factor analyses, canonical correlations, --

Q. What's a canonical --

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A. A canonical -- if you think of a canonical correlation, you think typically when you're doing some sort of statistical technique.

This goes back, because I don't use these things that much.

You typically have one variable on this side that you're trying to predict and multiple variables over here that you're trying to predict what happened with this one. So you might want to think that -- I do a lot of predicting elections. So I want to predict a vote. I'll use a number of variables here, try to help me predict a vote. Somebody's party identification, their age, if they voted in previous elections, their political etiology and things like that.

Canonical correlation is a technique that allows you to have more than one variable on the other side of the equation so you've got essentially multiple variables on both sides and you're trying to predict patterns of data with these multiple variables with patterns of data from your predictable data.

That's about as much as I can say on it now. It's been probably about fifteen years since I have even pretended to do one of these things.

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Q. Don't worry. I don't want to take a quiz in what you just told me either, in terms of my lack of familiarity.

But basically that's a summary of what you did with Mr. Stuebing at the Institute on Behavioral Sciences Laboratory?

A. Right.

And so the other thing that he did with us there is during our first year, -- Cincinnati was on a quarter system. So the fall quarter was mainly just learning the nuts and bolts of how to do these things.

And if you took computer classes back when you had the main frame, it -- it was a -- it was not as easy as it is now. So it took a while just to figure out how to do things.

About the middle to the end of the second quarter we started working with graduate students from -- people who were taking classes and had some research questions or they're doing some research project that they needed assistance on. Maybe even some masters-degree people doing research for their masters thesis. And we would start to work with them on those things.

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And the first year, -- Roger was really a -- we were kind of -- Roger was doing the work, and we were sitting in on the meetings between Roger and the graduate students and the faculty members and helping out what we could do and then asking him a lot of questions about how to do stuff.

And then as we progressed, we learned how to do these things ourself, so by the end of the first year we were pretty good at handling most of the more straightforward issues ourselves.

And then that -- the second year when we were more on our own and expected to do more consulting and have to be -- have -- having to consult Roger less, then we did that.

We tended to then rely on Roger for some of

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the more high-level stuff where we had some unusual questions.

Roger had been doing this sort of stuff -- he was trained as a engineer. And he had been doing this sort of engineering science research for the time I was there, probably fifteen, twenty years. And just probably seen every possible research design and data set question that you could imagine and was very good

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at sussing (ph) out problems and pointing out weaknesses and -- in designs.

Q. You mentioned that you had taught courses in the SPSS software package program?

A. Um-hum.

Q. Was that during the second year or later in your career?

A. It was the second year. I think I taught it for the first time spring quarter my second year in graduate school. I have to check to be sure.

I spent a third year at the Institute for Policy Research. Not working for Roger Stuebing, but -- and I know I taught the course during that -- course of that year, too.

Q. Was that after your got your masters?

A. No, in the same period I was getting my masters. Because I worked pretty much three quarters' time at the hospital, and worked anywhere from twenty-four, thirty hours at the institute. So it was taking me awhile to get my degree.

Q. Okay.

A. I was on my own financially.

Q. Jumping out of sequence a bit, you mentioned

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that you've used the SPSS package generally in your work over time. What is it about that particular software package that makes it attractive for you to have used in the course of your work?

A. I think historically the reason I got to use it is that academias get pretty -- fairly parochial. Different disciplines have their own particular statistical techniques that they've developed and even their specific software that they've developed. And they -- if you're in a particular discipline and you're professors are using a particular statistical technique, software, et cetera, you become more familiar with that.

Give an example of that, in survey research, the people from the University of Michigan developed the OSIRIS program. They were mainly political scientists doing work on the American National Election Surveys. So if you were going to -- to do work on American National Election Surveys, the data were saved on the tapes that you received in OSIRIS data sets, that were formatted to be used by OSIRIS. So if you're going to do work in political science studying elections, which is a very standard thing, you had to

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know how to use OSIRIS. And the vehicle to get into OSIRIS was SPSS.

SPSS was used then primarily by political scientists. And I was a political science -- in the political science department, so I used it more.

I used SAS a lot as well. It was used

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primarily by people in the psychology department and people in business. SAS is right now by far the biggest business software analysis package.

Q. Okay.

A. So I have a familiarity with SAS. And it's probably pretty much drifted by the wayside. I still use SAS for a couple things right now. But SPSS I use more often.

The other reason -- the reason why SPSS is easier to use, and often easier to teach, it's a mechanical means that processes data.

When you're writing a program in SPSS, it takes one record of data, so information on one person, and processes it. That records all the way through the data set. And when it's done with that one, it goes and gets another record and processes it through. So when you're writing code for it, it's a very logical --

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I do this, then this, and then this, and this, and you know that each case will go through every process like that.

SAS, on the other hand, processes things variable by variable at a time. So it takes one variable, so the vertical column in a data set, processes that variable all the way through for all the cases, and then goes and gets the next variable, and then process that all the way through. Which means you can get into some difficulties if you write codes so that you're referencing a variable that hasn't been processed yet. So it's slightly different there.

It's easier to teach people how to use SPSS.

I guess an analogy, have you ever used the Hewlett Packard business calculators, --

Q. Sure.

A. -- you're using the reverse polis notation? The difference between that and a standard calculator?

Now, the standard calculator, I think it's easier for most people to grasp, that eight plus six equals, whereas, you know, eight enter six plus for the RPN one. It's just a little bit different.

So teaching students with SPSS I found

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easier. And plus it's just familiarity.

My second several years at the institute when I did a lot of survey data analysis, professors there have used SPSS, so that's the one I used primarily.

And the other reason I continue to use it today is that it is much less expensive to buy than SAS. It takes much less space on your computer. SAS is somewhere in the neighborhood of two hundred fifty megabytes of stuff just to hold the software. In fact, when the PCs were first coming out, you had to have a humongous computer in order to run it, whereas SPSS was not quite as dependent upon lots of computer resources.

So there's a lot of reasons why you use it.

Q. If I can summarize your records from the CV, just in terms of chronology to make sure I've got it right, hopefully it'll move things along, but we've now gotten to when you got your masters at the University of Cincinnati.

And then in September '87 through April of '90, you were at the Sisters of Charity Healthcare System in Cincinnati, and --

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A. Can I back up one thing?
Q. Sure.

A. Because there's an important part of my masters work that we haven't talked about. And those are the last two years that I worked for the Institute for Policy Research, the IPR was more the umbrella, the behavioral sciences lab was part of it, this is when I really started doing polling work.
Q. In the last two years --
A. The last two years --
Q. -- of your master program?
A. -- the last two years of my masters program.
So this would have been in '83 I started. '84, '85. Starting in the fall of '85 and finishing up through the summer of '87.
I worked for three professors in general. Al Tuchfarber, who was director of the institute. I worked for Bob Oldendick, and he was a senior research professor there. And they were both professors in the political science department. And also George Bishop, who was a professor in the political science department. And he was my masters thesis advisor. And we collaborated on a number of articles. He was also my Ph.D. advisor. So we worked closely together.
Those last two years, I worked directly doing

polling. The institute conducted something called the Ohio Poll, which was a statewide survey of politics and elections. And my role on that was to do the programming of the data, to do data cleaning, because back then all the data had to be entered by hand, data cleaning, the data analysis, building data tables. And then I progressed with that. I would start to write some of the preliminary analyses of some of the press releases we would put out on that.
The second major project that we did there was something called the Greater Cincinnati Survey, which was a semiannual survey of the metropolitan Cincinnati area.
And that was a survey that was called an omnibus survey where you had clients that bought questions on it. And the clients were people like the City of Cincinnati Police Department, the county waterworks, the parks department, hospitals, City of Cincinnati itself. So it was generally government or kind of quasi governmental agencies purchased questions on that.
And, again, my role there was to do programming of the computers -- programming the

computers for data analysis, putting together data tables, doing some of the preliminary data analysis, et cetera.
Q. What kind of areas were surveyed at the Greater Cincinnati Survey?
A. Well, we -- our longest-running client was something called Queen City Metro, which was the regional bus company. We did -- twice a year we did a survey for them. They had a series of about fifteen or twenty questions where they asked about bus ridership, why you ride the bus, why you don't ride the bus. So that was one of the clients.

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The City of Cincinnati's Police Department had a series of questions. I don't remember if it was annually or semiannually that they did it. But they asked the same questions regularly about people's awareness of police in their neighborhood, their feelings of safety in their neighborhood, has crime gotten better or worse. It was actually early data that was developed to use the community-oriented policing program. It's a very large and useful data set, long-running data set, about attitudes towards police.

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The city -- the -- I think it was Hamilton County Waterworks was -- was a client where we asked people about their water supply, wastewater runoff, sewerage, all that sort of stuff.

We don't usually think about those, but it's an incredibly expensive part of any local or state government, the amount of money spent on waste treatment and providing of water. So they wanted to get attitudes about people's feelings about their water service.

Hospitals -- the university had a medical center, and the university hospital was part of that medical center. So we asked questions about it, particularly when it came to -- there were -- it was partially supported by a tax levy, a regional tax levy, so we did questions in relation to the tax levy.

Children's Hospital, which is affiliated with the medical center.

There was a rehab hospital called Drake Hospital that the university ran as well. So the questions there.

Q. Were the questions relating to the healthcare surveys patient satisfaction, qual- --

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A. Yes, we did do --

Q. -- attitudes towards quality of care, things like that?

A. That was -- I did some of that work later on --

Q. Okay.

A. -- in my second go-around at the IPR.

But in the Greater Cincinnati Survey, we really didn't get into those instances. It's more of the value that these institutions provided to the community. So that was awareness of them, their reputation, et cetera.

And then we did work for the City of Cincinnati. Every two years they did a budget priority survey where they asked people about their satisfaction with different city services and asked them whether or not they'd be willing to have their taxes raised to improve the quality of services. And this would help the city prioritize where it would -- when they sat down for their week-long budget retreat and they had to divvy up money to all the different departments, this would give them -- help them have citizen input into this process to point out what people were happy with,

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where people thought that money should be directed.

Q. Okay. So you were talking about the initial polling work in the fall of '85 through the summer of

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'87?
A. Yeah.
Q. We talked about the Ohio Poll and the Greater Cincinnati Survey?
A. Yeah.
Q. Anything else?
A. Yeah. We did some other -- I worked on some other smaller surveys for particular -- kind of like advanced work of the stuff that I had been doing the previous years with Roger. We had some faculty members that needed research done. Some particular survey, I would help them out on that.
And some of the other -- I'm trying to think of some of the ones that we did. Kind of a few smaller ones. They tended to be the -- from the college of nursing.
Dr. Tuchfarber at that time was putting together something that's now called the Institute for Health Policy and Health Services Research, which is part of the medical branch of the University of
0038
Cincinnati. And he was working with -- more closely with faculty members in that institute, or that part of the campus. And he was relying on me to help him out with their research.
Q. Okay.
A. And did we do any other ones there? There had to be some other things. It's been a long time. But those are the major projects.
At that same time I was working on my masters thesis with Professor Bishop.
Professor Bishop is a -- well-known in survey methodology for his work on, broadly called, question form effects.
Q. I noticed that expression appears in a number of the publications that you've apparently --
A. Yeah.
Q. -- coauthored with him and others?
A. Yes.
Q. Question form effects?
A. And that's a broad term that -- that talks in general about the changes that can occur in surveys that are more -- not really based on the substantive answers, but how you can manipulate a question to
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get -- how changing questions can result in different answers.
Q. Or change results?
A. Right. Change results. Get different answers.
And things there would be things like response order effect. If you change the order of the way you read responses to people, you can get very significantly-different results.
If you change the order in which you ask questions, you can get significantly-different results to questions.
If you do slight variations in the wording of questions, you can come up with very different results.
Even the matter of -- there's one experiment by Gallup, I wish I could remember, --
Q. G-a-l-l-u-p?
A. Yup.

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And all my work on my Ph.D. was all secondary analysis of Gallup data.

-- where Gallup changed one letter between a Form A and a Form B of a question, added an s, essentially making one word from the singular to

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pleural, and it had a significant difference in how people responded to the questions.

So it's a very important area. And I think my work with the -- Professor Bishop on that is very instrumental in setting my career and certainly in my Ph.D. work, but also just what you pay attention to in surveys. Because when you can see how somewhat small changes -- the impact that small changes can have, you are very sensitive to some of those things.

Other areas of question form effects that are related to it are things like the race of the interviewer, the sex of the interviewer. That can have an impact on people's responses.

Professor Bishop wrote a couple of articles that looked at people's responses to fictitious issues where people would give an opinion about something that doesn't exist. The famous one is do you think that -- this is paraphrasing the wording, but do you think that the 1975 Public Affairs Act should be repealed. It's roughly, I think, 25 percent to a third of the respondents to that question said, yes, they thought it should either been repealed or, no, it shouldn't be repealed.

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So it's an indication that people will answer survey questions with somewhat limited knowledge or no knowledge. They will pick words out of a question and base their responses to that question based on some words that they might hear, even if it is something that's completely fictitious, as was in that case.

And there's other people that have done research in that line of obscure items, obscure topics.

Q. You mentioned that Professor Bishop worked with you on your masters thesis?

A. Yes.

Q. I think your CV says what your dissertation was for your Ph.D., --

A. Um-hum.

Q. -- but it doesn't mention what your masters thesis topic is. Or did I miss that?

A. It's not customary to usually put what your masters thesis was.

Q. I'm not saying it's customary or unusual, it's not there. I just --

A. Yeah. It was on -- it was on --

Q. Just tell me what the thesis was.

A. Sure. It was an experiment that was looking

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at the mode of interview effects. That people answer questions differently if -- or the theory is that people will answer questions differently if they're asked face-to-face, as these older surveys were done, versus when they're on the telephone.

And the cognitive model --

And then also there is they will answer questions differently if you give them a survey to fill out themselves, like a mail survey, or just give them a

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questionnaire and they answer it themselves by reading it, versus how they would answer a survey over the telephone.

So what we did was an experiment where we took students from the university and randomly separated them into one of four groups. Group A got a survey that was done over the telephone, Group B also got a survey that was done over the telephone where some of the question orders were changed, the order of responses were changed. So some of the kind of classic manipulations of question order and response order were done. Group B -- or Group C and Group D, they got essentially the same questionnaires, Questionnaire A was the equivalent of Questionnaire C, and B was the

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equivalent of D, but they had the questionnaire administered like in a self-administered format where they were given the questionnaire, encouraged to take their time, read it carefully, go back and check their answers.

And the theory was that people who are answering the survey over the telephone are, in terms of response order, are more likely to give you what's called a -- produce what's called a recency effect, they're more likely to respond with the last answer that was read to them, whereas people who fill out a survey are more likely to exhibit what's called a primacy effect, they're most likely to choose the first thing they read or the first thing that sounds good. And the term for it is satisficing.

So we're expecting to see this -- what we were doing was, say, okay, do we see a difference on the telephone surveys between these, do we see response order and question order effects, do we see those same order -- response order and question order effects on face-to-face surveys.

And the results were in the order that we predicted. A couple of the results produced

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significant results. Some of them were in the right direction, but they didn't reach statistical significance. Some of them bore out some of the theories we were going into it with.

Q. Your research determined that depending upon what you ask, the order in which you asked it, the mode in which you asked it could effect the results of the survey from one group to the next?

A. Right. The mode part was the key part that we were doing.

We already knew that these things happened in telephone surveys, and we knew that they happened independently in mail surveys or self-administered surveys. We wanted to see what the relationship was when you randomly assigned people to these four categories so you could do comparisons of the same survey at the same time to see what those impacts were.

Q. Did your research lead you to any conclusion as to which modes of interviewing was more statistically valid and reliable?

A. There's -- I don't think there's a question to say one is more or less that statistically valid. It's not a matter of statistics here. It's a whole --

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it's a whole nother piece of the pie.
When we -- like when we -- a version on statistical methodology. Most people, and certainly the reporters I talked with, assume that a survey's margin of error is an indication of the accuracy of the survey. So if it has a smaller margin of error it's more accurate than, say, a survey with a larger margin of error. And I guess all these being equal, or all other things being equal, that's a fair statement.
But that sampling error is the one that we see in the newspapers all the time. Plus or minus 3 or 5 percent. It's there because it's a very simple formula that's used to calculate that. So we have a number and, therefore, people think the number has some real meaning.
But there's this whole other thing called nonsampling error, which includes all of the other problems that come up in surveys, problems with question order, response order, re- --
Q. Recency effect, primacy effect, all of that?
A. -- interviewer effect, the length of time that you're in the field, the response rates that you get, how well trained your interviewers are.

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There's all of these things over here in this nonresponse error pile that we can't put numbers on, so we kind of pretend they don't exist.
So getting back to your question about which is more accurate, it's -- it's not really a question more accurate, it's really a question of understanding what's likely to happen in the different types of surveys so that you're aware of what may go on or where you have to be a little bit more careful in your interpretation.
Q. All right.
A. It's not statistical accuracy; it's interpretational accuracy.
(Interruption by the reporter.)
(Discussion off the record.)
(Recess taken.)
MR. GRIFFIN: Back on the record.
Q. BY MR. GRIFFIN: All set?
A. Yes.
Q. Doing a chronology of your activities as set forth in your CV, let me make sure I have right where you were and what you were doing, in an effort to move along in terms of your background.

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After you got your masters at the University of Cincinnati, from September of '87 through April of 1990 you were with the Sisters of Charity Healthcare System in Cincinnati, correct?
A. Yes.
Q. And then after that, from April of 1990 to November of 1996, you were back with the Institute for Policy Research at the University of Cincinnati and working in part on the Ohio Poll, correct?
A. Yes.
Q. And then after that, beginning in November of '96 through December of '98, you were in Milwaukee, University of Wisconsin, the Institute for Survey and Policy Research?
A. University of Wisconsin, Milwaukee.

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Q. And while at the University of Wisconsin at Milwaukee you worked on the Wisconsin Poll --
A. Um-hum.
Q. -- and the Greater Milwaukee Survey, correct?
A. Yes.
Q. And then beginning in January of '99 you moved to New Hampshire?
A. Yes.

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Q. And have been associated with the University of New Hampshire and the Survey Center since January of '99?
A. Yes.
Q. Okay. Briefly, could you tell me what your duties were in that period of September of '87 to -- to April of 1990 when you were with the Sisters of Charity Healthcare System in Cincinnati?
A. I was in the marketing -- market research department for Sisters of Charity Healthcare System.
Q. And your CV indicates that you worked on consumer, patient, and physician research for that hospital system; is that correct?
A. Yes.
Q. How much on each of those three classes of groups of research did you do while you were there?
A. I'd say the bulk of it was on consumer research, 50 percent on consumer research, probably 20 percent on physician research, and the rest on patient research, patient satisfaction.
Q. When you say consumer research, -- and in connection with the Sisters of Charity Healthcare System, what do you mean?

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A. The system had, at that time, roughly twenty, twenty-five hospitals around the country. And we served as a market research department for the entire -- for all of the hospitals in the system. So we conducted consumer market studies that looked into how well-known hospitals were, which hospital people would prefer to go to for various illnesses or problems. Then we did a number of specific research projects that looked at specific parts of hospital services. As an example, we did quite a bit of research looking at a new maternity ward at a hospital in Dayton that was changing its focus from an old-fashioned kind of maternity ward to this more hotel suite sort of maternity -- so we did a series of surveys with patient focus groups, with patients, et cetera.
Q. From a marketing context?
A. Yeah. Marketing. Understanding why it is that people -- what people wanted, what they liked, what they didn't like, what would be the best way of getting that information out to the consumers.
Q. And the best way of getting those consumers in to use the new facility?

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A. Sure. Yes. Yeah.
Q. Was any of the research that you did while at the Sisters of Charity Healthcare System published?
A. I don't think so.
Q. Okay.
A. It could possibly have been used by some of

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the people at the hospitals. They may have used some of that data in their on work. But not that I'm aware of.

Q. At some point, April of 1990, you left the Sisters of Charity Healthcare System and returned to the University of Cincinnati?

A. Yes.

Q. How was it that you happened to leave the Sisters of Charity Healthcare System?

A. I had intended to go back and get my Ph.D.

My -- during the time I was with the Sisters of Charity, I kept in close contact with the people who I had worked with at the university. And Dr. Tuchfarber, the director of the institute, wanted me to come back and get my Ph.D. at Cincinnati and continue to work at the institute.

At that time, Dr. Oldendick, who was -- Bob

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was the No. 2 guy at the institute, took a position at the University of South Carolina, where he's director of a similar type of institute. So they had a real need for somebody with experience in what the institute had been doing in the Ohio Poll and the Greater Cincinnati Survey, just how things worked there. And so he invited me back and encouraged me to apply to graduate school to get my Ph.D. at Cincinnati. And that's the reason. That's the major reason I went back there.

Q. So while you were at the Sisters of Charity Healthcare System you were not pursuing your Ph.D.?

A. No. No. I had to take a couple years off.

Q. Okay.

A. I got married in 1987, too, so it was --

Q. Do you have any children, by the way?

A. I have two children.

Q. Okay.

A. A four-year-old, and a two-year-old.

Kept me up last night.

Q. I noticed that you were project director at the Institute for Policy Research. What did your duties entail in that regard?

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A. We worked on a project-by-project basis with a number of clients. I would be responsible with meeting with clients to determine what their research needs were, helping them design research studies that allowed them to answer the questions that they had, managed the -- or helped them conduct or write questionnaires, if questionnaires needed to be written, managed the survey data collection parts of it with the field director of the institute, did data analysis and wrote reports and presented results. So the whole range of conducting a -- primarily a survey research project, but also some focus groups and some other type projects.

Q. And you were also doing Ph.D. candidate work?

A. Yes.

Q. How much of your time was spent on class work or Ph.D. degree work versus the work for the institute?

A. Well, my first couple years I think I was supposed to work thirty hours a week at the institute. Never seemed to work that way. So I was essentially working full-time plus at the institute, and taking

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courses and doing my course work as well.
Q. Okay. Did you have to slow down the volume

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or number of courses you were taking in order to accommodate the work schedule?
A. Well, part of the -- part of the nice thing about it was I was -- I was partially -- my tuition was paid for on scholarship, and I was getting my pay from the -- working at the institute. Was kind of graduate student type of pay. So what I was doing in class related directly to my work, work directly to class. So there was a lot of a gray area between it. So we were encouraged to, you know, take the courses in the time we needed to do the course work first, and then focus on our research.
But the nature of survey research and working with clients also meant that you had to respond to the demands of the client, et cetera, --
MR. DOUGLAS: Slow down.
THE WITNESS: Thank you.
A. So it was --
Back to the question, --
Repeat the question for me.
Q. MR. GRIFFIN: I think I got enough of an answer. Let's go on to a new question.
A. Okay.

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Q. You also resumed working on the Ohio Poll?
A. Yes.
Q. If -- during what I'm -- I'll call your second period with the institute and at the University of Cincinnati, were your duties working on the Ohio Poll in 1995 through November of '96 different from the duties that you had working on the poll in the earlier --
A. Yes.
Q. -- time with them?
In what regard were they different?
A. The later years, I was much more responsible for writing and interpreting the data, and I would write the press releases, present results, discuss with the media the results of the survey.
So I became associate director. So I was really responsible for the actual production of the survey, whereas in the previous stints I was more of working on the -- working in the background doing some of the basic work for it.
Q. Am I right that although you were at the institute from April of 1990 you didn't begin working on the Ohio Poll again until January 1995?

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A. No, I was immediately working on the Ohio Poll. I became associate director, I believe, in January '95.
Q. But you had been working in some other capacity on the poll before you became associate director?
A. Yes. Yes.
Q. Okay.
A. Because I was -- I would describe it as a ramping up process from my first go-around and up until 1987. Then in 1990 starting kind of where I left off and then picking up my responsibility. So I was -- by

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the time 1995 came around when I was named associate director, I had already been listed as the coauthor of press releases that had been coming out.

Q. Now, sometime in late 1996 you left the University of Cincinnati and went to the University of Wisconsin at Milwaukee. How did that come about?

A. One of my faculty members at the University of Cincinnati had become the dean of the college of liberal arts at the University of Wisconsin, Milwaukee. They had a survey research center up there. And his name was Marshal Goodman. He asked me to come up and

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help them expand and develop the center up there.

Q. And when you say the center, what do you mean?

A. At the time, it was called the Social Science Research Facility. And they had a survey -- telephone survey operation within that. And he envisioned me to be able to develop that into a much larger center to do more research. Similar to what we had been doing at the University of Cincinnati.

I worked with Professor Goodman on a fairly large research project when I was at the University of Cincinnati.

Q. And I noticed you were an adjunct professor --

A. Yes.

Q. -- for approximately a year, 1998?

Was that a tenured position.

A. No, no.

Q. And did you teach students?

A. Yes.

Q. What level of students?

A. Advanced undergraduate and graduate students.

Q. And you were professor, I see from your CV,

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for public opinion?

A. Yes.

Q. Was that the name of the course?

A. The course was public opinion, yes.

Q. Had someone else taught that course before you?

A. Yes.

Q. So you didn't develop it, in other words?

A. Oh, I developed that particular course, yes. The title of the course was there, but I prepared all the materials for it.

Q. Was it the first time you taught a course in public opinion?

A. Yes. I assisted with other courses before, but that was the first time I had ever taught one.

Q. Okay. This was within, according to the CV, the Department of Mass Communications?

A. Mass communication, yes.

Q. What is that department, and what is that field?

A. It used to be called journalism, but now it's -- they've advanced.

Q. Okay.

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A. It's actually -- it's a little bit broader. Journalism and the actual study of communication. So it's a broader field.

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Q. Do you consider yourself an expert in mass communication?
A. That's hard to say. I would not say I'm an expert in all aspects of mass communication now. I would say I'm an expert in public opinion, which is a subsegment of that. There are a lot of things in mass communication which I have a passing knowledge of, but not an expert.
Q. Is there -- give me some examples of those things in mass communication that you do not regard yourself as an expert in other than public opinion poll?
A. There are a number of theoretical models on how people communicate. There's the -- for example, there's a guy, Noam Chomsky. He's fairly well-known in the field of mass communications, communications, and also sociology. He's written this whole literature. I know it's out there, but I'm not going to dig into that sort of stuff.
That's one example.

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There's also in mass communications the old field of actual journalism. I'm not a journalist. I don't claim to know journalistic techniques, other than I writes press releases. So I'm not an expert in journalism, which is another part of mass communication.
Q. Okay. What is the Institute for Survey and Policy Research at the University of Wisconsin, Madison?
A. It's Milwaukee. University of Wisconsin, Milwaukee.
Q. Did I say Madison?
A. Yeah.
Q. I meant Milwaukee. I'm sorry.
A. It was -- the Institute for Survey and Policy Research is what used to be the Social Science Research Facility. It changed its name, expanded its role.
Q. All right. And you worked there as a director of something called the Wisconsin Poll?
A. Yes.
Q. What is the Wisconsin Poll, --
A. It was --
Q. -- at least when you were there?

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A. -- it was very similar to the Ohio Poll. A statewide survey of public opinion done on roughly a quarterly basis looking at policy issues and elections in the State of Wisconsin.
Q. You also were working on the Greater Milwaukee Survey while you were at the University of Wisconsin at Milwaukee. Can you describe for me what that survey involved?
A. The Greater Milwaukee Survey was very similar to the Greater Cincinnati Survey. It was a metropolitanwide survey of the greater Milwaukee area. An omnibus survey. We had clients including the City of Milwaukee, the County of Milwaukee, some -- the United Way, some banks. Various clients doing the same sort of public opinion studies that we did with the Greater Cincinnati survey. Very similar model.
Q. And how did it come to pass that --
MR. DOUGLAS: Good. Shorter. Good.

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Q. BY MR. GRIFFIN: How did it come to pass that a Midwesterner in December of 1998 made a change to come to New Hampshire?
A. Let's see. How I could put this properly.
Universities have a reputation of having
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rather internecine politics.
My friend, or colleague, Marshal Goodman, who was the dean, had his vision for what he wanted the institute to do. The director of the institute, who was a tenured professor in the political science department, and also the director of the institute, was not quite --
Q. What was his name?
A. His name was Swarnjit Arora.
Essentially the plan -- Dr. Goodman's plan was for Dr. Arora to become director of a new institute that was being created that was looking at mainly Indian affairs, Indian subcons and affairs, and he was developing funding sources for that, and I would become director of the Institute for Survey and Policy Research.
Well, Dr. Arora was --
At the same time, there was -- a new president of the university came in. A new chancellor, I guess it was called there.
Dr. Arora, being around the university for some time, knew that deans come and go, and the plans that deans have come and go, and he figured that his
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best option would be to not take on the directorship of this new institute that was just being created but to stay at the Institute for Survey and Policy Research.
And at that same time, the opportunity came up at the University of New Hampshire. Which is very attractive to me, because one of the things that I worked on for years in Ohio was developing election prediction model. And New Hampshire, with the primary here, is a very attractive place to study politics and relations.
So that is the -- that was the other factor.
The third factor involved, and this is a domestic factor, my wife had just had a baby about six months before. And she had been working full-time. And this gave us an opportunity to go someplace and where she could stay at home with the kids.
All of those things coalesced nicely.
Q. And brought you to [DELETED]?
A. And when you come and visit Durham, it's a beautiful campus, and it's a nice place to live.
Q. Okay. Do you have plans to go back to the University of Cincinnati?
A. Not especially. They continually ask me to
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come back. And my wife is from [DELETED]. And her family still lives there. So there's potential down the road. I won't say that there's never any plans to move anywhere, but right now we're quite happy here.
Q. Before we talk about your work in New Hampshire at the Survey Center since January '99, let me ask you this.
With your days back in the Midwest before you came to New Hampshire and the work you did there, did

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you do any work on tobacco and public health issues prior to working at the Survey Center of New Hampshire beginning in early '99.

A. If you could pull that apart?

Q. Tobacco and health is basically joined at the hip in terms of my question, so --

A. I'd have to pull it apart, because I don't know if we did any work specifically on tobacco issues.

Q. Um-hum.

A. And I can't remember -- I can't recall any.

But we did do quite a bit of work on public health issues, access to public health. The work with the hospitals, --

Q. Right.

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A. -- work with the hospital council in the greater Cincinnati area. We did patient satisfaction surveys at a number of the hospitals that were in the university hospital system. Patient satisfaction surveys with the university's physician practice. They had a -- university faculty also had a medical practice, and we did their patient satisfaction surveys. So we did quite a bit of public health policy work.

I also was a coauthor on a national health policy survey in 1994 at the time during the Clinton administration's health policy effort.

And this was at the same time that Dr. Tuchfarber was starting up the Institute for Health Policy and Health Services research. It was a very nice project for us to kick that new institute off with.

So we did some national health policy work mainly, though, looking at issues around access to healthcare, quality of healthcare, available, some women's health issues, et cetera.

Q. Okay.

A. So we did a lot of health policy work, but I

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can't recall specifically anything about tobacco.

Q. Um-hum.

A. There may have been some things in the Ohio Poll about public smoking, but I really -- I can't -- I can't recall them. I just don't want to rule out that there may have been something done, but I can't recall it.

Q. Having reviewed your list of publications and presentations at conferences that are appended to your CV, I did not see anything related to the subject of tobacco prior to the time you went to the Survey Center of New Hampshire; is that fair?

A. I'd say that's fair. Right.

Q. So you have not -- prior to the time you came to New Hampshire in January '99, you had not published anything as an expert in polling and survey work that specifically related to tobacco issues?

A. Not that specifically related to tobacco issues.

Q. Okay. And after you came to the University of New Hampshire, you did various surveys on smoking subjects, correct?

A. Um-hum.

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Q. And they were, for example, an Initiative of the New Hampshire Charitable Foundation involving youth smoking?
A. The corporation was called New Futures.
Q. New Futures?
A. Yes.
Q. And that was a -- that's listed at Page 8 of Exhibit 1-A, your curriculum vitae, under the category of sponsored research reports?
A. Um-hum.
Q. Would that be the first sponsored research report you prepared on the subject of smoking issues?
A. I'd say yes.
Q. And thereafter, later in your time in New Hampshire, --
MR. DOUGLAS: You want to look here?
THE WITNESS: Yeah, I was --
MR. GRIFFIN: Sure.
MR. DOUGLAS: Something to look at.
A. So that was on Page 8?
Q. BY MR. GRIFFIN: Page 8 of -- more or less the middle of the page. It's actually --
A. Yeah. New Hampshire Youth Smoking Survey.

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Q. Actually, you have three reports that were issued in March of '99. One of which was the New Hampshire Youth Smoking Survey for New Futures, correct?
A. Yes.
Q. And that was the first time you issued a research report concerning the subject of smoking-specific matters?
A. That I am aware of. Let me take a look back through some of the other ones here. Just to make sure that none of these were not in some way related. But -- no. I don't believe.
Q. Okay. Then I see on Page 7 of Exhibit 1-A, I believe it's the fifth report listed, a reference to the January 2000 Breathe Easy Campaign, the survey for the American Lung Association. Do you have that before you?
A. Yes.
Q. Was that the next report on which you worked while at the Survey Center at UNH on -- which concerned the subject of smoking issues and cigarette issues?
A. Yes.
Q. And then if you could turn to Page 6 of

0068

Exhibit 1-A, on the top half of the page beginning I think five down.
A. Um-hum.
Q. I see three reports identified, all issued in August of 2000, --
A. Um-hum.
Q. -- all for the American Lung Association, concerning reports and surveys on tobacco and health issues; am I correct?
A. Yes.
Q. That would be Breathe Easy Radio Campaign Evaluation; --
A. Yes.
Q. -- the Not-on-Tobacco Project Evaluation; and the No Butts About It Project Evaluation?

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A. Yes.
Q. And then turning to Page 5 of Exhibit 1-A, I see a reference, five from the top, under the sponsored research report category, to a November 2000 report issued on Smoke-Free New England Survey for the American Cancer Society?
A. Yes.
Q. Those reports which I have just read that are

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listed as reports you created for the American Cancer Society, New Futures, and the American Lung Association, --
A. Yes.
Q. -- does that constitute, as we sit here today, the universe of survey work and polling information you have done on tobacco work --
A. No.
Q. -- while you've been in New Hampshire?
A. No.
Q. Is there something currently underway?
A. There is something that will start in the future. We're going to do a -- essentially a replication of the No Butts About It -- I believe it's the No Butts About It -- no, it's Not-On-Tobacco Project Evaluation for the Lung Association. They have some funding with the State of New Hampshire to conduct that program.
Q. Is that referenced on Exhibit 1-B of your latest CV?
A. I don't even know if it's on there, because we haven't begun to do any work on it yet. It's just in the planning stages.

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Q. Is that work on the Not-On-Tobacco Project in the nature of an update, or a completely new approach, --
A. No, it's essentially taking the same program and the same valuation model but they're expanding it to other schools. So it's just doing the same thing over again.
Q. Okay.
A. And there is one other one which is in this updated version of the -- my vitae -- Where is it? It should be on here. I might not have it on here.
There is another survey that we have completed in the spring of this year, which I don't have on here.
THE WITNESS: And you've got copy of it. I think you've given it to them. On the Smoke-Free New Hampshire.
MR. DOUGLAS: Is that the one I sent you, Mike, recently?
MR. MURRAY: Let me -- let me -- you want to take a look at this?
MR. DOUGLAS: Yeah. Let's see if this is it.
MR. MURRAY: Oh, that's Smoke-Free New

0071

England, I'm sorry.
THE WITNESS: I think it's --
MR. DOUGLAS: Why don't we go off the record while we're looking.
THE WITNESS: Sure.
MR. GRIFFIN: Sure.

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(Discussion off the record.)
(Recess taken.)
Q. BY MR. GRIFFIN: Doctor, we have located something called the Granite State Poll Project, Report For a Smoke-Free New Hampshire, prepared by the Survey Center in May 2002. Is that what you had reference to earlier?
A. Yes. Yes.
Q. Who sponsored this particular project?
A. It's a coalition, Smoke-Free New Hampshire. And it was -- I don't want to leave anybody out, but I probably will. I believe -- it was the American Cancer Society, the Lung Association, I believe the medical association was involved in that as well, but I'm not positive with that, and I think the State of New Hampshire had some involvement in that as well. But it was a coalition of organizations. And I just worked

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with the coalition, not the specific organizations.
Q. Okay. If I can go back instead of forward, back to your time before you went to the University of New Hampshire and some of the work you did in connection with your studies for your Ph.D. and other work, --
A. Um-hum.
Q. -- I note that your Ph.D. dissertation concerned the subject of question and response order experiments, correct?
A. Yes.
Q. That focused on the Gallup polls?
A. Yes.
Q. The question and response order experiments were addressed to the same area and issues we talked about earlier this morning, namely, how important the order and presentation and the mode of interviewing can be with regard to the impact on survey results?
A. Yes. This focused on -- there was a chapter on question order effects, a chapter on response order effects.
And what I did was went back to Gallup data sets, --

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Gallup had been conducting experiments into this as early as -- I think the first thing -- survey they did with any sort of split-ballot experimentation was in 1936.
But from 1938 up through 1988, they conducted a series of question order, response order experiments.
And I went back and rebuilt all the data sets, did the analysis, did the experiments, and did a net analysis about what we can conclude about what types of effects were likely to happen in the way they ask the questions.
Some of the surveys that they did were what's called auditory mode. This is getting to the mode issue. Auditory mode, where I ask you a question, and you don't see anything, you just respond back to me.
And the others were asked in visual mode, where I would give you a card or something which you would read and choose an option off the card.
So there were some differences in mode of presentation as well.
Q. Okay. Was response order effects and

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question wording a focus, an interest, of yours in connection with your work in the area of public opinion polling and survey?

A. Yes. Including back -- back to my masters thesis, yes.

Q. And you have published various articles on the -- those subjects over the years, correct?

A. Yes.

Q. I noticed in your list of publications on the CV -- beginning at Page 3, there are, I think, at least four publications coauthored between yourself and G. F. Bishop. Is that the Professor George Bishop you talked about earlier at the University of Cincinnati?

A. Yes.

Q. All right. And were Professor Bishop and you both interested in the subject of response order effects and interpretive analysis of polling data?

A. Yes.

Q. Professor -- you had mentioned Professor Tuchfarber along with Professor Bishop earlier in terms of professors you worked with at the University of Cincinnati while you were there pursuing your studies. I noticed that there is another coauthor that appears fairly frequently in the list of publications, a E. W. Rademacher. Have I pronounced that right?

R-a-d-e-m-a-h-c-e-r.

A. Eric Rademacher.

Q. And who is Eric Rademacher?

A. Eric started graduate school about a year after I did. He worked at the Institute For Policy Research as a graduate student. He was my assistant, essentially, during my time there. And he worked on a number of projects with us.

Q. Okay. Are Professors Bishop and Tuchfarber still at the University of Cincinnati?

A. Yes.

Q. On the list of conference papers at Page 5 of Exhibit 1-A, there is, in the second-to-last list of conference papers, a paper entitled Party Identification: Does the Wording of the Question Make a Significant Difference, presented in 1992 at a particular annual meeting. Do you see that one?

A. Yes.

Q. What was the answer to the question posed in the title of the paper, Does the Wording of the Question Make a Significant Different?

A. No, it does not make a significant difference.

Q. Does not.

How did you reach that conclusion based upon the research supporting that question and hypothesis?

A. There are two standard versions of the party identification question: One which has been asked by Gallup for years; one that was asked by the University of Michigan in its American National Election Surveys going back to around 1960 or so. Different organizations used different versions of that question.

There was a professor -- two professors at Michigan State, Abramson and Ostrom. They did research which claimed that there was a difference, that

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questions essentially meant different things to different people.

Q. This is political party affiliation?

A. Political party affiliation.

The Gallup question is: Generally -- one of the questions, because I'll get mixed up as to which is which, one of the questions says: Generally speaking, do you usually consider yourself a Democrat, a Republican, or an Independent. The other question reads: In politics as of today, do you consider yourself a Democrat, a Republican, or an Independent.

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And Abramson and Osrom claimed that the in politics as of today measured short-term partisanship, and the other question, which said generally speaking, measured long-term partisanship. And they claimed that there was a difference based on some panel studies that they had done.

It just doesn't ring true to us. We conducted a series, I think fifteen or seventeen experiments, where we randomized people getting one version or another of this question and then looked at those, and there was no difference.

That was subsequently published in the American Political Science Review. And it's now pretty much generally accepted, that there is no difference between the two questions.

Which is very important to students of politics, because party ID is probably the strongest explanatory value variable in predicting how people will vote. And if you know that it doesn't really matter which version of the question that you have, it means that you can be more confident in how you use those and how you compare results of those.

And APSR is the best journal in political

0078

science. So --

Q. How did you first get involved in the Longden case, Dr. Smith?

A. Mr. Douglas contacted me. It was either in -- it was in the winter of last -- of this past year. It was either December or January. I think from the notes that I have, I would -- early January. Date when he first contacted me about it.

Q. Had you ever had any prior contact with Mr. Douglas on any matters?

A. No.

Q. And was the contact about working on the Longden case, as you recall it, or was it on some other litigation?

A. It was -- I don't remember at the time if it was specifically said that it was the Longden case, but he was -- the question was would I be interested in doing some work on some tobacco litigation and serving as an expert witness about public opinion.

Q. Okay. And when were you actually retained to work on the Longden matter?

A. Let me check my notes on that.

I think I've got the exact memo here. I

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believe it was in May of this year? I have a meeting on May 25, is when I think we discussed it. So it would have been in May or early June that -- I believe

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Mr. Douglas would probably have the memo that denotes that specifically.

Q. Prior to the May 25 meeting, had you done any work or research in connection with the Longden case?

A. Not specifically in connection with it, no.

Q. So your work on the matter began after May 25 of 2002?

A. Yes.

I think I may have done some preliminary readings of some of the materials that I was aware of after my initial conversations with Mr. Douglas. Some standard magazines and journals about public opinion that I get. Like Public Perspective, which we've been published in. So I looked at some of those materials.

I also had some familiarity with the questions that Gallup had asked because of my work on my dissertation. So I was aware of these things being out there.

Q. Okay. Did you have any hesitation in taking on to work in the Longden matter? And the reason I ask

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is because you were approached, let's say, January of 2002, and the meeting occurred in May of 2002.

A. Not particularly hesitation. I think it was more of a matter of Mr. Douglas first approached me and asked me would I be interested in this, and I said at that time that, yes, that would be something that I would be interested in. And then, well, I'll get back to you with some more information as things go along. So that was how things went.

Q. Did Mr. Douglas indicate to you how he had come by your name in order to contact you?

A. If I can recall, which you should probably ask him specifically, I recall -- I think he said he had read in some of the press releases we'd had or seen me on television or on radio in the state.

Q. Did you enter into a written retention agreement with Mr. Douglas's office with regard to your work on the Longden case?

A. Yes, we did.

Q. Okay. Are you charging an hourly rate for your services in this matter?

A. Yes.

Q. What is your hourly rate you're charging?

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A. Eighty-five dollars an hour. Which is what I charge at the university. I think there's a -- I don't remember what it is. -- there is a higher rate for courts and depositions.

MR. DOUGLAS: Yeah, I can't remember what it is, Tom. It's --

MR. GRIFFIN: Yeah.

MR. DOUGLAS: It's higher for court and depositions, but I don't remember what the rate is.

MR. GRIFFIN: Um-hum.

Q. BY MR. GRIFFIN: What were you asked to do in connection with the Longden case, Dr. Smith?

A. I was asked to examine the available public opinion data about smoking, dangers of smoking, hazards of smoking, and using my knowledge of other aspects of survey research and the literature or survey research, offer my judgment as to what was the state of public opinion about the risks, dangers of smoking at the time

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Mr. Longden began smoking.
Q. Your judgment on the state of public awareness?
A. Public opinion, awareness, attitudes.
Q. And what did you understand to be the time
0082
period when Mr. Longden smoked?
A. That he started smoking in 1962.
Q. What opinions were you asked to provide in the case?
A. What general public opinion was about the dangers of smoking.
I believe I've -- I talk about that someplace in -- in that exhibit. Could I refer to that?
Q. Sure. I'm going to ask you questions about what we're calling Exhibit 2, the disclosure.
A. Yeah. Yeah. Essentially this is the things I was asked to do. About --
Where is this?
MR. DOUGLAS: He'll go through it.
THE WITNESS: Okay.
MR. DOUGLAS: You just want to say that -- the materials that are listed.
Q. BY MR. GRIFFIN: Okay. For the record, Dr. Smith was referring to what's been marked as Exhibit 2 to his deposition, the disclosure.
And have you formed opinions in connection with the matters in this case?
A. I have. And based on the evidence that --
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the information that I've been able to analyze, yes.
Q. And you understand that you are expected to testify at trial with respect to these opinions?
A. Yes.
Q. Okay. Now, what have you done since May 25, 2002, in connection with the work that Mr. Douglas asked you to do in coming to opinions on these matters?
A. I, on my own and with Mr. Douglas's help, have assembled survey work that had been conducted during the time frame.
Q. This is the historical survey work?
A. Historical survey work.
And a number of these are listed in the memo of October 3.
Q. Which is, just so the record's clear, Exhibit 3 to your deposition?
A. Yes.
And also -- there were -- so looking at these materials, looking at some -- there were some other materials which I have here that I can show you about other people's compilation of some of the data on -- that -- that's available on smoking. And then --
Q. Just so I'm clear, if I could go back, --
0084
A. Yes.
Q. -- you just referenced to other data that you could show me. These are polls that are not listed either on Exhibit 2 or 3?
A. I believe they're all listed in there. It's -- with secondary analysis of data, it's often difficult to find the results. So you often have to depend upon other people's compilation of them. And that's why I think I have them all listed in there, but

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there may be some that are not listed.
I think I point out that I expect to find other sources of information over the next year. It's -- it's kind of a digging processes to find old survey work. So I'm continuing to do that.
And I also expect to do some further analyses and get the actual data sets of some of these surveys.
Q. Okay. Now, you mentioned that you have since the May 25 meeting been assembling the historical survey work --
A. Yes.
Q. -- on your own and with Mr. Douglas's help?
What did you mean when you said with Mr. Douglas's help.

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A. Well, Mr. Douglas, being involved in this sort of litigation, and, I imagine, looking at other cases that have been conducted, was aware of some surveys that I had not been aware of that are not generally available.
And as an example of some of those, there were some Mediametric survey projects that were done with physicians that came up, I guess, in the course of other cases. So I was given those reports by Mr. Douglas. And that's part of my basis of my decision.
Q. Other than the Mediametric studies that you referred to, which are mentioned on Exhibit 3, were there any other materials or historical survey information which Mr. Douglas or counsel for the plaintiff had provided to you?
A. There were some other pieces, but I think they were things that I found in other places or -- a lot of overlap between some of the materials that Mr. Douglas sent me.
For example, he sent me a photocopy of a Public Perspective article, which I had already had. And so there's that sort of overlap.
But I think there were a couple additional --

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actually, there was one other additional survey that he sent me. The information from the Scholastic -- Senior Scholastic magazine survey, which I've looked at.
There's also some references to some other polls.
The problem with some of those is that you don't have the actual reports from either the organization that conducted those, and the methodology is lacking in some of those areas, so it's difficult to evaluate the work, how valuable those surveys are, without seeing some more of the information on it.
So I'm continuing to find those. I'm aware that there are a number of other surveys out there that looked at attitudes about cigarettes and smoking. But they're difficult to find.
Q. When you say that the survey methodology was lacking, are you saying that the survey was in some respect deficient because it did not --
A. No.
Q. -- conform to the survey --
A. Right.
Q. -- technology, or you don't know how the survey was conducted and put together?

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A. I do not know how the survey was conducted and put together.
Q. Okay. Now, you mentioned that you expect to find or do further analyses -- I should say you expect to do further analyses when you get data sets. What do you mean by data sets, and why haven't they become available so far?
A. The data sets are available. It's a matter of paying the cost of getting them and having the time to dig through and do the analyses.
Some of the analyses that I would like to conduct are analyses based on the age and the level of education of the respondent.
Some of those data are available, but they're not available in all of the old data sets.
My -- again, with my dissertation, construction of those data sets is a rather laborious process.
They were stored on data tapes. They have to be read off the tape. And something called multipunch format. Which is kind of a old antique way of storing data on a tape. And it's a laborious process of doing that.

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So what I'm able to base my conclusions on right now, overall conclusions, are published results, and then with my further analysis, I'll be able to add some more -- some more specificity to different aspects of that.
Q. Are these data sets available for each of the surveys or polls for which you are seeking to acquire them?
A. I'm not aware if they are all available. I will be getting them from the University of Connecticut's Roper Center. Roper Center has a data archive of polling -- a polling data archive. And they've got the old Gallup polls, some Harris polls, Roper polls, and then a number of other surveys as well. They don't have all of them that they have listed, and not all of the data sets are in a format that can be used. So I'm not -- they may have a listing of it. They may have the results of the survey.
For instance, Gallup published its results of its survey in a magazine that came out regularly. And still comes out. But that doesn't mean that the -- necessarily that the data set still exists. This is

0089

old stuff. So --
Q. Okay.
A. I will use the ones that I can.
Q. Have you identified data sets that do not exist?
A. Have I in previous times? Yes.
Q. (Nods head affirmatively.)
A. In my work on my dissertation.
Q. But in connection with the data sets for the polling information related to tobacco that you are intending to do further work on, have you identified already that some of the data sets that you were looking for no longer exist or no longer are usable?
A. I have not identified that any of them are -- no longer exist or are no longer usable.

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Q. Okay.
A. I'm not -- that's not to say that they're not, but I have not conclusively shown that they're not available.
Q. When have you made inquiries of the University of Connecticut and the Roper Center for these data sets?
A. I've used their poll database, which is an

0090

on-line database which I have access to, which can get results of the surveys.
Q. And you've already canvassed that?
A. Yes, I have canvassed that.
Q. Have you done, yourself, any independent polling or survey work specific to the Longden case?
A. No.
Q. Have you prepared a written report of your opinions and the bases for them other than what is set forth in the disclosure on Exhibit 2?
A. No.
Q. Have you ever spoken to the plaintiff, Mrs. Sheila Longden?
A. No.
Q. Have you spoken to any other witnesses in the case or people who have given depositions in the case?
A. Not that I'm aware of, no.
Q. Have you read any of the deposition transcripts in the case?
A. Let me -- can I reference this?
Q. Sure.
A. Because there was one piece of information that Mr. Douglas sent me. I want to see --

0091

MR. DOUGLAS: Want to go off the record while he looks?
(Discussion off the record.)
(Recess taken.)
Q. BY MR. GRIFFIN: I think the last question I had asked you, Dr. Smith, was whether you had read any of the deposition transcripts in the case.
Have you had a chance to check your file to determine that?
A. Yes. I do not believe that I've read any.
Q. And you were checking a binder of material?
A. Yes.
Q. Can I ask you basically what was in the binder of material?
A. Secondary reports of survey data. Articles.
Let's go through it.
This is an article talking about --
Q. We'll do that later.
A. Okay.
Q. Let's do that later. Or we'll handle it in a more efficient way. I just want to know generally what it was and how you came by it.
A. Generally, these are results of survey data,

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for the most part.
Q. And these include materials that you collected and assembled as well as those provided by Mr. Douglas?
A. Yes. Yes.
Q. And, Doctor, --

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A. Yes.
Q. -- have you, in connection with your work in this matter, reviewed any materials or testimony from any other lawsuits involving cigarettes and cigarette smoking?
A. I did review one. I kind of glanced through it to get a kind of -- just a sense of what's said in it.
Q. And what was that?
A. I don't even know if I have it here, because I don't think I read it all the way through. It was in lawyerese that lost me partway through.
Q. How did you come by that particular document or source?
A. On a global search on the Internet.
And there may be one other piece in here, which is part of a deposition -- this piece I found,

0093

which was -- this is actually a piece of historical literature that I think was used as testimony in a case.
Q. Can you tell me what you're referring to?
A. It's a -- the -- the title of it is Cigarette Smoking and Health Risks, Four Centuries of Information and Public Awareness. The date is December 11, 1989. And it's kind of a compilation of information about -- somebody said historical awareness of tobacco. Again, I found it on the Internet. So it has both the transcripts as well as the published report.
Q. Is there a case reference as to where that particular --
A. That's what I was trying to look at here.
I don't see one.
There's something here that says Bliley (ph), underscore, PM, but that -- that's kind of meaningless to me.
It says, confidential, prepared for litigation, but I don't see a specific case, if it's in there. It may be in there, but I'm not aware of what it would be.
Q. We'll look at it later, and deal with it

0094

later.
MR. DOUGLAS: It looks like it's one of the fly-away tobacco docs, but he got it on his own, so --
Q. BY MR. GRIFFIN: Have you consulted with any public opinion experts who have testified on behalf of plaintiffs in any other tobacco litigation?
A. Not that I'm aware of, no. I haven't in relation to this case at all, no.
Q. Okay. Are you aware of the plaintiffs other expert witnesses in the case?
A. I'm aware that he has other expert witnesses, and I've seen their names listed. I glanced a little bit at their testimony. But I would say I'm not really aware of the depth of it, no.
Q. Have you communicated or conferred with any of the other experts --
A. No.
Q. -- listed on the disclosure?
A. No.
Q. How much time have you put into this case?
A. Add up the hours. I would say I'm in the

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neighborhood of forty to eighty hours. I've got it listed -- I've got a time sheet back in my office, but --

Q. And I take it you bill Mr. Douglas for your time on a periodic basis?

A. Yes.

Q. Is there some understanding you'll do it every quarter or every month?

A. No, there actually wasn't an understanding. There was a retainer that was initially given to me. And then, as indicated, when that runs out, send him a bill for additional time. But I haven't sent him a bill. I'm beyond the retainer, but I haven't sent him an additional bill.

Q. All right. He's on notice.

MR. DOUGLAS: Yup.

Q. BY MR. GRIFFIN: Have you performed litigation consulting work for anyone else in the past?

A. No. As my answers -- talking over you and giving the stenographer a hard time with my testimony.

Q. We've looked at your CV, both the earlier version we received plus the latest version. Have you, with respect to either version of your CV, edited the CV in any way for purposes of this litigation?

A. No. Well, I would say the -- any editing that was done, I was asked to update it. And I added some of the things just as of last evening. Which is the document that you have here of some reports that I just recently completed. So, as we know, it needs further editing and updating, but nothing has been deleted, no.

Q. So this is the same version of your CV provided to anyone --

A. Yes.

Q. -- who would request a copy of that in connection with your work?

A. Yes.

Q. I haven't matched up the current version of the CV, but I remember that --

Can I see Exhibit 1-A?

A. Um-hum.

(Witness complies.)

Q. -- I remember that there were several publications listed in 1-A that were forthcoming.

A. Um-hum.

Q. And the ones I have in mind, if I can refer you to the top of Page 3, does the current version, the one you provided this morning, Exhibit 1-B, indicate the publication sources for those publications?

A. Yes.

Q. Okay. So they have, in fact, been published?

A. Yes.

Q. And the new CV, Exhibit 1-B, has the source information?

A. Yes.

Q. I note that the CV references five professional affiliations that you have?

A. Um-hum.

Q. Have you received any professional awards or honors from any of those associations or organizations

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listed on your CV?
A. Professional awards, honors? No. Not that I'm aware of.
Q. In connection with your field of public opinion and political science in general, have you received any awards or professional recognition for your work in those fields?
A. Just publications, yeah.
Q. Insofar as the work has been published and referenced, that that is the recognition that you received for that work?

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A. Yes.
Q. Your CV states that you have a major focus on public opinion among other things. When you use the term in your CV major focus, what do you mean by that?
A. It's what I spend most of my research time on.
Q. And when you say public opinion is one of the major focuses, what do you mean by public opinion?
A. Well, it's a broad kind of a catchall term that refers to -- actually, let me step back. Because you're referring to -- this is during my graduate studies.
Q. Oh, I see.
A. So this is when I was in graduate school. And the focus on public opinion would -- involved my studies of survey research, my work at the Institute For Policy Research, which was studying public opinion, and some of the publication work that we had done.
Q. Does public opinion continue to be a major focus of what you do at the Survey Center?
A. Yes.
Q. And what you have done at both the Universities of Cincinnati and Wisconsin?

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A. Yes.
Q. And so public opinion, you were saying, is a broad catchall term that refers to what?
A. Public opinion refers, in general, to the attitudes that publics, and there's many definitions of publics, but the attitudes that publics have about various issues. It's -- could be -- some people define it as broadly as including things like market research, et cetera. Other people define it more narrowly to talk about the more public-policy-type issues.
Q. And do you define it narrowly or more broadly, what you do?
A. Yeah. The more narrow definition. I don't do real market research. And I don't do advertising research. We do some evaluation studies, which is kind of another broader -- another aspect of public opinion.
The other parts of public opinion that -- the other theme of it is kind of the historical, theoretical aspects of public opinion. Why it's important in democracies, how it's used by governments, how publics express their opinions to government. So that's the other major aspect of public opinion.
Like the nuts and bolts of how do we measure

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it using the most common tools, which is surveys and survey research, and then kind of theoretical importance of -- public importance to democracies and

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democratic theory.
Q. I think I asked you this earlier, and you said that you agreed, you consider yourself to be an expert in public opinion?
A. Yes.
Q. And your disclosure describes you as an expert in polling?
A. Yes.
Q. Do you remember that?
A. Yes.
Q. Be happy to refer you to it.
A. Yes.
Q. But do you happen to recall --
A. Let me just take a look to make sure that --
Q. Sure. That would be Exhibit 2.
A. Yes.
Q. Do you consider yourself to be an expert in polling?
A. Yes.
Q. What is the difference in being an expert in

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polling and being an expert in public opinion?
A. Polling is really referring to the way that public -- one way that public opinion data is gathered.
That's -- probably the most common way that public opinion data is gathered, and the one we're most familiar with, is reading the newspapers.
Public opinion in general is a much broader topic which includes how those public opinion data that are gathered through polling are used by governments, are translated back to people and policies, et cetera.
Q. Are there any other fields of expertise or areas of expertise for which you expect to give expert opinion in the Longden case other than expertise in polling and public opinion?
A. I think within that umbrella of public opinion, survey methodology is certainly an area in which I'm considered an expert. And that relates to this case in a couple of different ways.
And relating to that, I'm sort of somewhat of an expert in election predictions, but I don't think that really has much bearing here.
Q. Well, you never know what Mr. Douglas may have in mind for his own future endeavors.

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MR. DOUGLAS: No, I've read the polls.
MR. GRIFFIN: I understand.
Q. BY MR. GRIFFIN: You just used a term, and it's also referenced in your CV, the term I have reference to is survey methodology. That was a major focus of yours in connection with your dissertation, and you think that you will be giving expert opinion on survey methodology in this case, correct?
A. (Nods head affirmatively.)
Q. Is there a generally-recognized and accepted methodology by which polls and surveys are designed and taken and utilized?
A. I would say there are multiple methods. There is no -- if you go to the professional meetings, you have -- will have people arguing and presenting studies that show one particular facet as better than another facet, or one way of doing it as better than another way, and you'll have people on the other side

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countering them. So it's an ongoing practice. Ongoing academic debate. There are better ways of doing it, and there are worse ways of doing it. But is there a best model? You'd probably get different answers on that.

I don't mean to be vague, but it's just not -- in any academic discipline, there's not really a settled best way of doing anything.

Q. And there is no recognized best way to have scientific validity to poll or survey results?

A. There are models that you can shoot for. Like platonic ideals, let's say. But in the real world, very seldom do surveys reach maybe an ideal status. Mainly because of issues of money and practicality and time. So when you take the theoretical ideal and apply it in the real world, it's not often reached.

I think what we try to do is do the best job that we possibly can with the resources that are available.

Q. And when you review a poll or survey result, you have to assess whether the pollsters and the surveyors of public opinion did the best job they could do based on the circumstances they were dealing with at the time?

A. Yes.

Q. Now, does survey methodology pick up not only surveys but also polls?

A. Poll -- polls and surveys are somewhat interchangeable terms. They're referring to the same mechanical process of gathering data from people.

Polls tend to be used in the newspaper world, in the political world, whereas we call things in the -- more the academic world we like to call them surveys because -- I don't know. There's so many different connotations to the word. Some people don't like to be called pollsters. They like to be called survey researchers. Some people would rather be called a pollster than a survey researcher. So I'm happy with either one.

Q. So there's no one survey methodology or polling methodology that should be followed in order for the results in the poll or the survey to be scientifically valid?

A. There are multiple ways that you can do them.

Just very briefly, face-to-face surveys, which are how Gallup polls were conducted and how some polls are still conducted, are thought by many people to be the best way of doing surveys. They have high response rates. You've got a lot of interviewer control of the survey situation. They're incredibly expensive, so very few people do them.

Telephone surveys are thought to be, when done properly, are a very good representative. They're much less expensive. You can do them faster. The response rates to telephone surveys tend not to be as high as in-person surveys, so there's some issues with nonresponse bias.

There are mail surveys. Mail surveys, when they're done in general, are not usually thought

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to be as good. But you can do mail surveys. Following a guy named Don Gillman who wrote this whole book on methods of doing mail survey. That if you follow his techniques, you can do mail surveys which will get you response rates as high or higher than telephone surveys, and the quality of the data are very good. The expense of it, it's kind of a long, labor-intensive process.

Q. What is the downside to the mail survey?

A. The downside to a mail survey is you're dependent upon the list of people that you're mailing to.

Another downside is that they take longer because you've got to mail something out to somebody,

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they have to take the time to fill it out and mail it back, it may sit on their kitchen counter for a week or two, things could happen that intervene, like a September 11 kind of event could occur in the middle of the survey, and that would affect people's results before and after.

Another problem with a mail survey is you don't -- as an interviewer, you don't have any control over the environment in which the person is filling out the survey. So they may be kind of watching TV or cooking dinner and filling out -- one person may be cooking dinner and filling out the survey, while another person may be focusing on it very carefully and closely. You don't know how that's going to be done. You don't know what the person's going to be doing, so you don't have control of that aspect of it.

There is a tendency in, say, standardly-conducted or normally-conducted mail surveys to have fairly low response rates. Somewhere in the 20 percent, 25 percent range. And you tend to get a bimodal distribution of people who are extremely -- very interested and happy with a particular topic filling it out, or people that are really angry and

0107

disgruntled filling it out. And the people in the middle that are just kind of -- not really interested or not concerned about the topic tend not to fill it out. So there are some problems there.

But, again, a well-designed mail survey with proper follow-ups and incentives and things like that could compensate for a lot of those issues.

Q. You mentioned face-to-face --

A. Um-hum.

Q. -- surveys, telephone surveys, mail surveys. Any other types --

A. There are --

Q. -- type of surveys under the survey methodology --

A. Yes.

Q. -- rubric?

A. Internet surveys, now. Web page surveys. They're becoming much more common. They're inexpensive. You can do them relatively quickly. They work very well if you've got a defined population. Like you're interviewing a professional organization or a group where you've got a defined list of e-mail addresses and you can follow up with them. You can get

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high response rates. You can get quick data turnaround.

They don't do very well in a general population setup because there's a bias as to who has access to the Internet. You know. Right now in New Hampshire we've got about 80, 85 percent of adults have access to the Internet either in home or work. So that means we've got anywhere from 10 to 20 to 15 percent that don't have access. So you've systematically excluded those people from your sample, if you're doing a general population survey. So -- the penetration of the Internet hasn't gotten to the level where it's equivalent to telephone, so there's a downside there with that.

But there are improvements in Internet surveys being done all the time. There's research being done on it. Don Gillman, the guy I mentioned earlier, who's done the most research on mail surveys in his latest two editions in his book has expanded that into Internet surveys as well. So academic research is being done in those areas right now.

Q. Any other kind of surveys that would fit under the survey methodology rubric we've been talking

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about?

A. There are something called intercept surveys, which are like equivalent -- an example would be like an exit poll where you have a person stationed at a particular geographical location and they randomly choose people to interview as they walk past. This is often done in market research. You'll see people in the mall doing it. Intercept surveys. But exit polls are probably the place that we most think -- the best -- the best-conducted intercept surveys would probably be exit polls.

Q. Any others?

A. There are some that fall under survey methodology, but they're really kind of frowned upon. Like call-in surveys. Where you're watching the news, and they give you two eight hundred numbers. Call this number if you like the Yankees and this number if you like the Red Sox. Those have some tremendous methodological flaws. If you try to generalize the results of that to the overall population, it doesn't work.

Q. Because of the following that the person has for one team versus another team? Partisanship, for

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example?

A. Sure.

A big problem if you're doing a call-in survey and flashing numbers on a television station, you're only reaching, you're only allowing, those people who happened to be watching that TV station at that particular time to even participate in the survey. The great majority of the adults in wherever you're looking at aren't even watching, so they can't even get on. Plus the -- you have to get somebody who's extremely motivated to go pick up the telephone and take the time to dial the phone. So you tend to only get those people that are really partisan one way or another on an issue to fill it out.

A similar problem with Internet pop-up

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surveys. You'll see a lot of Internet surveys on news sites, newspaper sites, television news sites where they essentially do the same sort of thing. They're not seen as particularly valid ways to express public opinion.

Similar to this, there are also magazine mail-in surveys where you have a little survey that's stuck inside your magazine and they want you to fill it

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out. You send it in. Information about you and what you like to do.

Then there's a whole other type of surveys which are, nice acronyms, frugging and sugging.

Frugging is fund-raising under the guise of research. And that refers to -- you have -- probably have gotten these if you live in New Hampshire. Certainly in election season. Where you get a survey coming from a political party or a candidate that's asking for your input about a series of issues, and then down the bottom is, by the way, could you include your twenty-five, fifty, a hundred dollar contribution. So that's one.

Sugging refers to sales under the guise of research. And that's the guy who calls you up and says they're doing a short survey of people in your area about aluminum siding. And, by the way, are you interested in aluminum siding. And we're having a sale right now on aluminum siding in your neighborhood. So they're not really conducting research, they're trying to sell you something.

Q. Do you consider public opinion surveying and polling to be an exact or inexact science?

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A. Oh, it's certainly not an exact science.

Q. Not an exact?

A. It is not an exact science.

Q. Okay.

A. We have confidence intervals and sampling error estimates built into every reported survey. Even the census we know doesn't interview everybody that they speak to, and the census is probably the best-conducted survey that there is. So they're missing some people. So -- and they have -- still having arguments of whether their adjustments that they make to the census are accurate or not. The best way to do that.

There is also that whole issue of nonsampling errors that we have to consider. Response order, question order, question wording, interviewer effects, all of those things are in there. And we know that that stuff can impact the results. So it is not an exact science.

And one of the things that I try to do to make -- let people know that it's not an exact science is when we publish our survey results, and we've been doing this, now, for the last several years, the

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computer will give you the results down to tenths of a percent or hundreths of a percent, if you ask it to. But it's -- you shouldn't publish the data with those tenths of a percent on there because it gives people a false sense about how accurate the results are. So if somebody sees that somebody -- one particular candidate

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has 52.4 percent of the vote, it seems like it's pretty accurate, 52.4. And I think that's a false sense of accuracy. So I definitely round my numbers up to at least 52 percent.

And when I discuss polls or I talk about the results, and I'm going to be writing some press releases this week on some election polls, I will report what the survey says, but I'll talk about whether or not this is within the margin of error or not and give my interpretation from years of analyzing these things as to what they actually mean.

MR. DOUGLAS: Are you at a break point?

MR. GRIFFIN: Happy to. Yup. Yup.

MR. DOUGLAS: Because I was going to say, I should probably -- it takes some time -- just thought if we could do something on the lunch -- is that okay?

MR. GRIFFIN: Sure. Sure. Appreciate the

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courtesy, Chuck.

(Discussion off the record.)

(Recess taken.)

Q. BY MR. GRIFFIN: You had just spent some time talking about survey methodology and the various modes of surveying different methodologies used. Is there some criterion or approach that's recognized, Dr. Smith, about the minimum number of participating respondents that must be involved in any of these surveys you mentioned in order for the results to have any validity?

A. The number of respondents, again, it's typically the one that gets reported the most, because it makes a difference with the confidence interval, but there is a standard. It's usually like four hundred or so people in a large population. It gives you a sampling error of plus or minus 4.9 percent, which you round it up to plus or minus 5 percent.

It's seen as kind of meaning that it's okay.

Q. That's the political arena in terms of polling or all areas?

A. In generally the political arena. You'll see most surveys will have four hundred cases. Frankly,

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the difference between four hundred and three hundred fifty cases, if you're just looking at an overall population, doesn't make that much difference. Your sample error -- I think the difference between three hundred and four hundred, it goes from 5.7 down to 4.9 percent. Fairly small increase in, quote, accuracy of the survey.

But when you're trying to determine your sample size, you have to choose a confidence interval that you're comfortable with. And you really just choose it. And 5 percent seems like a fairly comfortable one for most people.

And then the second thing you have to pay attention to is the smallest subsample group that you're interested in talking about. So if you're interested in 65-and-older-women living in one part of your state, you have to make sure you have enough of those cases in your sample in order to say something meaningful about that. And when you get down to subsample sizes, you're going to want to have somewhere between thirty and fifty people in a subsample.

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So often what we do when we're talking about the number of people you need to include in a survey is

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to start with your smallest subsample and then kind of build backwards in order to determine how many people you would need to interview in order to get that subsample.

So back to your question about is there a generally-accepted standard, I would say in political polling four hundred is a very comfortable standard, but even less than that it's fine to do it.

Again, my concern in surveys, the area of accuracy really is all of the things that go into this bucket of nonresponse error rather than just response error.

Q. You used the term confidence interval, which to me, perhaps incorrectly, means another way of saying margin of error.

A. Yeah.

Q. Is that right?

A. Yeah.

Q. Oh, it is?

A. There's a -- specific statistical differences between it, but functionally it works as the same thing.

Q. Okay. A survey analyst or pollster,

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depending upon what the person calls himself, as you said, is asked by a client to run a poll or survey to generate results. The subject matter of the survey must, in the vast majority of cases, not be an area of expertise of the pollster or the surveyor himself or herself, correct?

A. I think there's a difference between expertise and having familiarity with the topic that you're surveying, and then expertise and being maybe like a medical researcher or a public policy specialist in a particular area. So what -- the difference between asking the questions and what you do with the results and how you write up the results and you build them into policies, there's differences. So there's different levels of expertise that we would possibly be talking about.

Q. Okay. What I'm trying to get at is in terms of setting the intervals, the sample subset, the order, the questions, whatever, is it appropriate methodology or practice for the pollster or the survey consultant to consult with the client seeking the information, be it the newspaper, be it the bus line, be it the firefighters, --

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A. Ab- --

Q. -- or American Lung Association, in order to have some sense of what it is that the client is looking for and have that match, hopefully, what will be a survey or poll that is reliable and scientifically valid?

A. Absolutely. What we -- I work under kind of broadly called a management decision-making model for designing questionnaires. Where I say, okay, why are you going to -- why do you need to do this research in the first place, what information is it that you need to know, what kind of decision are you going to make

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based on the results of survey. So we start off with those big questions about what are the management decisions that you're going to need to make.

Like the bus company. Do we -- can we increase our fares or not. Can we run our routes less frequently or not. Some things like that.

Then you go from there and say, okay, what sort of questions do we have to ask, or what kind of specific information do we have to get from people in order to get that information.

And then the next step down is, okay, let's

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craft survey questions that can be used to answer these questions -- general questions which will allow you to make your management decisions.

Q. Okay. Once a survey or poll has been done pursuant to one of the methodologies, how does the professional pollster or survey analyst determine whether the results accurately reflect the state of knowledge or information or the public's awareness?

A. See, the process that you go through, because it is a process, the first thing you want to do, from a nuts and bolts standpoint, if you're the survey researcher, is you look at the demographics of your survey, compare them with known demographics of the population that you're studying.

So if I'm doing a survey of the State of New Hampshire, I would want to make sure that the demographics of the people, the adults that are included in my survey, are pretty close to the adults in New Hampshire.

And we know from years of experience with doing polls, if you conduct them properly, using the RDD setup, random digit dialing, --

Q. Just so I'm sure we're on the same wavelength

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on this one, the process component you're talking about, is that in the design of the survey or in the quality control evaluation of the results? I'm more concerned with the latter.

A. Yeah. I was speaking to the latter.

There's a whole issue about the design of the surveys, which is the issues of question order and response order and that. But I was speaking about the latter.

Q. Okay.

A. And you can do some techniques which you can weight the data so they more accurately reflect demographic characteristics.

And when we do political polls, we're very concerned about that because we want to make sure that we have the proper percentage of men and women in our sample. Because we know that there are -- men and women vote differently. We want to know that we have the proper portion of older people in our sample and younger people, because older people tend to vote more Democratic than younger people.

So there are some correlations that we know based on demographics that are important in making sure

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that the results are accurate we want to take into account.

So that is one step that we take into

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account.
And then evaluating as to whether or not they are -- accurately reflect what's going on. Often -- it's seldom that you're the first person who's asked questions on a particular topic. Polling has been going on now since the 1920s or '30s. So there's all -- there's data that are collected on a particular topic.
I also like to use the same questions that people have used in previous surveys so I can compare. We know that changing the wording of questions can make a difference. So if I'm asking about a particular topic, I'd like to try to make sure that the questions are similar. So that's one way that you can compare to see if the results are accurate, to see if there's been changes over time, to see if it fits in with how other people are measuring.
And I think an example of how that works is if you look at questions about presidential approval, there are about four or five different ways of asking

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presidential approval questions, and they all kind of fit in the same sort of a band, they travel in sort of the same sort of a band, so you can see over time and across survey houses whether or not the results that you got would fit into what other people are saying.
Q. The quality control component has to consider whether in the prior polls that you just referred to there was something that may have skewed or caused the interpretive accuracy of the results to be questioned. How do you determine when you're looking at, as you just said, the earlier poll questions, whether or not you're not just building on the same basis or the same problem that was created in an earlier-run poll or survey?
A. You do have to make an assessment about how the earlier poll was run. For instance, the Gallup polls, I know the methodology that was used in the earlier Gallup polls, how they did their sampling, how the interviews were conducted, how the data were put together. You know, the wording of the questions, you know, how many people were asked the questions, you know, the time frame in which the questions were asked. You know, the sampling procedures that they used.

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And Gallup, frankly, did have some problems with its sampling procedures that it used. As we all know about Dewey defeating Truman in 1948.
So, again, when you referred earlier to what's the best way of doing things, well, that has changed over time as we learn more and more about survey methodology and reports of different things in surveys. So kind of the state-of-the-art or the best practices have changed over time.
Q. I didn't ask you this when we were going through your background. I think I meant to, but didn't. So I'll just run back to it now.
I exhausted, I think, your explanation of what you did at various aspects of your professional life but never asked you about the Survey Center in New Hampshire.
What is the Survey Center since you've been working with it, and what have your duties and

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responsibilities been there since January of '99.
A. The Survey Center is a center with the -- within Institute for Policy and Social Science Research. IPSSR. And it's in the college of liberal arts.

I report to Dennis Meadows, who is the director of the IPSSR. He reports to the dean of the college of liberal arts.
The Survey Center -- its role is to serve three circles of people. First is the university's administration, the university system administration. So we do projects for them on a wide range of topics. And I also kind of serve on committees and boards for them giving expertise about surveys.
The second circle would be the university faculty. Faculty members conduct research that need -- that have survey components. We're doing -- just finished up one recently on farm stands in New Hampshire, and we're going to be doing another one on neglect, child neglect, in New Hampshire and Maine for faculty members. So we do those sorts of projects.
And also some -- to a lesser extent, we do some work with graduate students who are conducting research for their Ph.D. or thesis.
So there's the academic component of it.
A. Then the third circle that we serve is the broader population, primarily of New Hampshire, because this is -- University of New Hampshire is a state university. We see our mission as really serving the State of New Hampshire first.
And here we do work with local governments, state governments, various state agencies, not-for-profit agencies. We do some work for businesses, but not too much. And we have done work in the broader context of New England and some national studies as well. So --
But those are our three major groups.
Kind of a side-bar to that is I also do political polling with Channel 9, WMUR, in the state, which fulfills two components. One is kind of working for a business, in this case, in New Hampshire, but secondly it's part of my academic research.
Q. Okay.
A. And the structure of the Survey Center is that we are not funded by the university. We get our funding from projects that we conduct. We get a little bit of funding from the university to provide graduate students and some space and things, but we pay rent to the university. We pay the university for the lights and the computers and telephone lines. All of those sorts of things. All of the salaries of the people who work at the universi- -- at the Survey Center are generated by grants and contracts that -- projects that we do. Which is one reason we include businesses in there, because they tend to pay more than the local governments in New Hampshire.
Q. When you came to the Survey Center in January of '99, was it an ongoing enterprise?
A. It had -- the Survey Center was started in the 1980s by a guy by the name of David Moore who was a

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professor in the political science department. He is now -- I don't know his exact title, but he's with Gallup. He's like the poll director with Gallup on political polls.

He ran it for a number of years, and he left, I believe, in 1992 to go to Gallup.

He had an assistant who took over the helm of it for a number of years. That assistant went into a private practice. Essentially started up his own company and told the clients that the Survey Center had that the university was closing down its practice, but he happened to be opening up his own company. So there was a down-time there, as you might expect.

And the director that they brought in after

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Kelly Myers, who was the second guy, the director they brought in after him didn't do much for a year-and-a-half.

So when I came back -- when I came on, it was -- I want to say it was essentially flat. There wasn't a lot going on.

Q. Okay.

A. So anything that's happened at the Survey Center over the last three-plus years are projects that I've been able to bring in and build up.

Q. And I notice you have as many as a hundred part-time interviewers --

A. Yeah.

Q. -- that are involved?

A. Yeah.

Q. Are the interviewers students of the university or --

A. About 60 percent are students, about 40 percent are nonstudents. Kind of fluctuates depending on the time of the year and the projects that we're working on. I think right now we've got about forty-five or fifty interviewers.

Q. Has the Survey Center itself, as opposed to

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you individually, done any work in connection with the polling or public opinion work for the Longden case?

A. No.

Q. And I take it that none of the income you're receiving for work you do on the Longden case in terms of polling and survey advice and consultation is being in whole or in part paid to the university?

A. No, no. That's separate.

Q. Independent source of income for you?

A. Yes. Yes.

Q. As I understand part of what you're doing in terms of expert work in this case is to assess what public opinion was at some time in the past, correct?

A. Yes.

Q. Okay. Have you ever had occasion with any of the work you've done to do that before, namely, attempt to assess what public opinion was at some time in the past as opposed to assessing existing public opinion?

A. Yes. With -- my entire dissertation work was secondary analysis of data and experimental work with data that was conducted back into the 1930s. So, yes, it's a matter of assessing what public opinion was at that time using questionnaires at that time.

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Q. This was the Gallup polls?
A. Yes.
Q. Beginning in 1938, subject of your dissertation?
A. Yes.
Q. Apart from that?
A. Yes. Also there is some publications that are in the -- indicated in there, in my vitae, which address those sorts of things.
An article on the Smith, Tuchfarber, Rademacher, and Bennett, Partisan Leaders Are Not Independents.
Q. Can you focus me on the page?
A. Page 3 under publications. It's near the bottom.
You might have the newer version.
Q. I'm looking at the older version. Is that 1-A that you're looking at?
A. Yes. 1-A.
Q. Okay.
A. Fourth --
Q. The Smith article?
A. No. Above that where it says Smith,

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Tuchfarber, Rademacher, and Bennett, Partisan Leaders Are Not Independents.
That was an analysis of partisanship looking back over -- we had about six -- four to six years' worth of data of slices of the time on that. It was American National Election Surveys analyzing people's attitudes, partisan attitudes, and voting behavior at various times.
Q. Would that be -- that be the four to six years prior to the publication of the paper in 1995?
A. No. Actually, it went much further back than that.
Q. What was the four- to six-year period, then?
A. Four to six slices in time. I think we went back to 1980 using data on that. I'd have to refresh my memory. It's been quite sometime.
The article above that by Tuchfarber, Bennett, Smith, and Rademacher. Republican Tidal Wave of 1994. We looked at public opinion data on partisan and voting records going back until the 1920s and '30s, I believe. Looking how -- looking at the issue of the partisan realignment and whether partisan realignment had occurred in conjunction with the 1994 election.

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Q. How far back did you go, again?
A. I think it was back to the 1920s or 1924 election. I can't remember exactly.
Q. Um-hum.
A. Have to refer to the actual article.
The article, Bennett, Rademacher, Smith, and Tuchfarber on Affirmative Action. Why Do Whites Oppose It, Will It Play a Role in November. That also looked at historical attitudes about Affirmative Action.
And what other ones do we have here?
Those are the ones in the publications -- well, I take that back.
The Obermiller and Smith article concerning contamination. We looked at an older survey that was done about the attitudes of people towards

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environmental problems, and we looked at specifically Appalachian immigrants.

Q. How far back in time did you look for that article concerning contamination?

A. The data on that was about, oh, four to six years old. Again, I'd have to refer to the specific article, but it was somewhat back in time.

And then looking at conference papers, a

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number of these are using the same sorts of things. And most of them involved looking at data from public opinion data from prior years.

I would say I probably can identify the ones that do not more quickly than the ones that do.

Goodman, Tuchfarber, and Smith on Minority Rights and Majority Interests. That was all using current data, so that was not historical.

The survey on Question Wording and Partisanship, Experimental Resolution of the Controversy. That was an earlier version of the paper that was published in the American Political Science Review looking at the differences in the party ID question. So that was using currently-collected data.

Q. Where was that on the exhibit?

A. Page 5.

Q. 5.

A. Bishop, -- it's the one, two, three, -- fourth one up from the bottom. Bishop, Tuchfarber, and Smith --

Q. Okay.

A. The -- on Page 4, the bottom of Page 4, the Bishop, Tuchfarber, and Smith, Question Form and

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Context --

MR. DOUGLAS: Slow down when you're reading titles.

THE WITNESS: I'm sorry.

A. Question Form and Context Effects In the Measurement of Partisanship. That's, again, the previous edition of what became the APSR article.

The article --

MR. DOUGLAS: You want all of them, Tom?

Q. BY MR. GRIFFIN: Are there many more?

A. There's just really, I think, one other one that's not. So these are -- again, these are ones that aren't --

Q. Right.

A. But everything else pretty much is.

There's one be Steeh, Arora, and Smith, The Threat of Telephone Answering Machines, A Recent Assessment. That was a methodological thing on answering machines.

And then the other ones are all --

And then the final one, Tuchfarber, Rademacher, Downing, and Smith. Accuracy in Preelection Polling and Projections.

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That was historical in some sense. We looked at older surveys. But that was mainly an assessment of what had happened recently.

So I would say that the bulk of my research has involved making assessments of public opinion using older surveys and not assessments of what's currently

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done. The bulk of my research is that -- obviously, my sponsored research projects are much more concerned with current states of opinion.

Q. Okay. Have you ever done work to ascertain public awareness with respect to the dangers of consumer products apart from tobacco?

A. Yes. It would be the dangers of not using consumer products.

We had done a number of studies with researchers at the University of Cincinnati Medical School about the use of child seats and the child booster seats and seat belts, et cetera. So that I would put under the rubric of not using or not properly using a consumer device.

Q. Was it a survey with respect to proper or -- and improper use of the child seats, or a survey that was more focused to the public perception of the

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utility of child safety seats?

A. Both.

Q. Both?

A. Both. It was a fairly -- the work at Cincinnati on that involved one survey which was actually intercept where we had people in parking lots watching people put their kids into car seats. So actual measurement and seeing what they were doing. And also attitudes that people had about the use of seat belts, the use of car seats, at what age should car seats be used, how should they be used, et cetera. Yeah.

Q. And that was for an existing public opinion analysis?

A. Yes, those were data that we collected.

Q. It was not historical in the sense that you went back and used or reviewed public opinion data from earlier press or surveys on the same subject?

A. We had trend line information from surveys that we had conducted over time on the same topic, yes. So in that sense, it was historical. The last versions of it we were doing work on we were comparing current results with past results.

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Q. And the past results were University of Cincinnati results?

A. Yeah.

Q. How far back in time to the earliest of the surveys by the University of Cincinnati on the subject?

A. I think, and they're still doing them today, but I think when I was involved with it, it might have been three or four years' worth of data on that.

Q. Okay. Apart from child seats, any other consumer products where you do polling or survey work on public opinion?

A. Not that I'm aware of. Maybe. But not that I'm aware of.

Q. Have you ever consulted or given advice to a client with regard to the design of a warning for -- to be placed on a consumer product?

A. No.

Q. Have you ever provided professional advice either to a product manufacturer or to a retailer or product seller regarding any warning label for a consumer product?

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A. No. Not that I'm aware of, no.
Q. I take it you do not expect to give testimony
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at trial regarding when a duty to warn arises or when a particular warning is adequate?
A. No. I don't think that's my area of expertise.
Q. I had asked you this morning whether you'd ever testified in court as an expert in a civil proceeding. You told me no. But there is a variation on this question I just want to ask to make sure I've covered it.
Have you ever been found qualified by any court as an expert in the field of polling or public opinion or survey methodology?
A. Not that I'm aware of, no.
Q. Do you have any training in psychology or psychiatry?
A. I have taken courses in psychology. And in the area of survey research, one of the major theoretical models of how surveys are answered is a cognitive psychological model. So as part of my dissertation work, I am familiar with that particular model, of how people answer questions and why they answer questions the way they do.
Q. First of all, with regard to the courses,
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were they undergraduate courses in psychology?
A. I had undergraduate and graduate courses in psychology. Graduate in methodology, in psychology. Research methods.
Q. And your familiarity with the cognitive model, as you described it, when did you come by that familiarity in your training and education?
A. Masters program.
Q. Masters program?
A. It was part of my masters thesis as well as my dissertation.
Q. You don't consider yourself to be an expert in psychology; do you?
A. No. No.
Q. You do not consider yourself to be an expert in clinical psychology?
A. No.
Q. Do you consider yourself to be an expert in consumer behavior?
A. I'd have to say no. I have done research on some aspects of it, but I wouldn't consider myself to be an expert in it. I've got enough things to worry about in life without getting into that.
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Q. Do you consider yourself to be an expert in marketing?
A. No, I would say I'm not an expert in marketing.
Q. You do not expect to give any expert testimony in this case at trial regarding the subject of advertising and cigarettes?
A. Only -- if there is, it would only be in relation to survey work that I have found that's done about the effectiveness of it. Because in my vitae I cite a study that we did in New Hampshire looking at effectiveness of the Breathe Easy Campaign, which was a

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radio stop smoking campaign in Manchester. So it was an evaluation of how effective that was. I guess you could describe that as consumer behavior.

Q. Okay.

A. Broadly speaking.

Q. You don't have any degree in history and don't consider yourself to be an expert in history; do you?

A. I do not have a degree in his- -- in history. I -- I would not consider myself as expert in history, but I would have to say, because of the nature of my

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job and profession, that history and the historical analyses and understanding of American history, particularly 20th Century American history, is very important to it.

Q. What is your background in American history, then?

A. Considerable course work in undergraduate, graduate school as well. Political science is often referred to as just current history. So much of my political science work on American politics is really American history. Public policy -- also, public policy courses go through considerable historical development of policy.

So I'm not an expert, but, you know, it's a routine part of the work that I do.

Q. You've never published an article in an historical journal; is that right? I don't recall that on your CV.

A. No, I don't believe so, no.

(Interruption.)

(Lunch delivered.)

(Discussion off the record.)

(Testimony continues in Volume II)

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CERTIFICATE OF WITNESS

I, ANDREW EDWIN SMITH, PH.D., have read the foregoing transcript of deposition taken on Tuesday, October 8, 2002, at the offices of Douglas, Monzione, Leonard & Garvey PC, Concord, New Hampshire, and do hereby swear/affirm it is an accurate and complete record of my testimony given under oath in the matter of Longden v. Philip Morris, including any and all corrections that may appear on those pages so denoted as "Corrections."

ANDREW EDWIN SMITH, PH.D.

STATE OF

COUNTY OF

Subscribed and sworn to before me this

day of , 20 .

Notary Public

Justice of the Peace

My Commission Expires:

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C E R T I F I C A T E

I, Jennifer A. Vaillancourt, a Certified Shorthand Reporter and Notary Public of the State of

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New Hampshire, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of the deposition of ANDREW EDWIN SMITH, PH.D., who was first duly sworn, taken at the place and on the date hereinbefore set forth.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

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